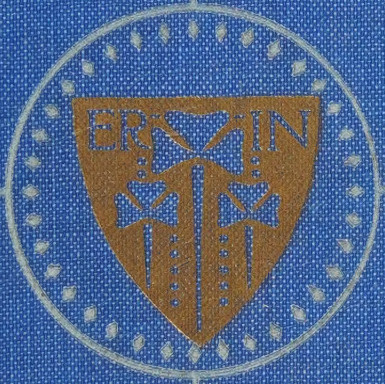
CONFISCATION IN IRISH HISTORY



W. F. T. BUTLER

DOMINICAN COLLEGE,

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Co. Kildare.

Awarded to

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CONFISCATION
IN IRISH HISTORY

General Map of
IRELAND
to show localities
mentioned in the text
Inishowen
Route
Cianachta
Tyrconnell
Lough
Tirowen
Neagh
L. Erne
Fermenagh
Irish
Oriel
Iveagh
Sligo
Dundalk
Moylurg
Kells
Boyne
Drogheda
Umail
Trim
THE PALE
L. Corrib
Connemara
Hy Many
Liffey
Dublin
Galway
Delvin
Offaly
Earl
of
Kildare
Clanrickard
Forcullen
Fertir
Lough
Ely
Imaal
Crioch
Brenach
Corcomroe
Derg
Leix
Thomond
Coshe
Arklow
Limerick
Kilkenny
Duffry
Connello
Earl of Ormond
New Ross
English
Wexford
Waxford
Lands of Earl of Desmond
Waterford
Duhallow
Blackwater
Coshmaing
Barrymor
Desmond
Muskerry
Cork
Imokilly
Kinel-
meaky
Bantry
Bere
Carbery
EXPLANATORY NOTES.
Area planted under Philip and Mary.
The actual plantation affected only Leix and that part of Offaly directly under O'Conor
Sporadic confiscations under Elizabeth of districts occupied by the "mere Irish".
For reasons given in the text the area actually confiscated after the Desmond rebellion cannot be accurately marked on a map of this scale. Almost the only continuous tracts confiscated were those held by some native Irish clans, viz., O'Donoghue Mor, O'Mahony (between Muskerry and Carbery), Mac Auliffe in north-western Duhallow, Mac Carthys of Coshmaing, Clan-Donnell Roe and Clan Dermond.
The six Plantation Counties of Ulster.
Area affected by the Plantation of Leinster, temp. James I.
Area of Strafford's proposed Plantation in Limerick and Tipperary.
George Philip & Son, Ltd.

MAP I.

CONFISCATION IN IRISH HISTORY

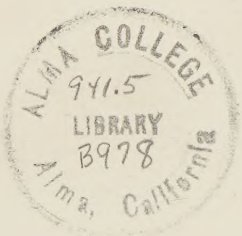
BY

WILLIAM F. T. BUTLER, M.A.

(M.R.I.A.)

Author of "The Lombard Communes"

Second Edition



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INTRODUCTORY NOTE

In working at one phase of Irish history my aim has been above all to find out and set down what actually happened; a matter not at all as easy as one might suppose if one were merely to consider the number of works dealing with Ireland in which the various confiscations have been treated more or less fully. As to figures one soon learns that it is rare that any two sources agree; quotations from original documents are often inaccurate; the totals set out in the printed copies of our original records rarely agree with the figures of the various items which go to make them up.

In certain cases, notably as to the extent of the confiscations under Cromwell and William of Orange, and as to the exact state of landed property in Ireland after the Acts of Settlement and Explanation, there is still a field open to research.

My acknowledgments are due to the courtesy of the officials of the Dublin Record Office and to the Librarian of Lambeth Palace.

CONFISCATION IN IRISH HISTORY

CHAPTER I

THE TUDOR CONFISCATIONS

The History of Irish Confiscations may almost be said to be the history of Ireland from the first coming of the Anglo-Norman invaders until five centuries later, when confiscation ceased, apparently for much the same reason as a fire burns itself out, because there was nothing more left to confiscate.

The first confiscation, following on the invasion, differed radically from those that came later, because it was carried out by right of sword, without any attempt at justification by legal quibbles.

To some extent the Normans in Ireland were only following the example set by their grandfathers in England.

But there was one important point of procedure which has profoundly differentiated the history of the two countries.

William the Conqueror claimed to be lawful King of England, whose right was disputed by the Pretender Harold and other rebels. If the English lost their lands it was as rebels. Theoretically he

confirmed all previous laws and customs, and left all loyal subjects in enjoyment of their own.[1]

Practically, at first a considerable number of Englishmen kept their lands, and though this number was afterwards greatly reduced, there was no legal barrier to the acquisition of land by an Englishman, and no Englishman could be deprived of any lands he had, unless under some alleged ground for dispossessing him.

The result was that in a hundred years the two races began to amalgamate, and that at the death of King John, if not sooner, the amalgamation was complete.

But the procedure in Ireland was quite different.

The Irish, with but very few exceptions, were dispossessed of their lands in the conquered districts. Even Giraldus Cambrensis comments on this as likely to hinder the process of conquest. And Sir John Davies in his "Discovery of the True Causes why Ireland was never Entirely Subdued" devotes several pages to showing how the native Irish were shut out from the enjoyment of English laws, and were reputed as aliens.[2] And in particular he dwells on the fact that the native Irish were deprived of their lands.[3] He says—"And though they (the Anglo-Normans) had not gained the possession of one-third of the whole kingdom, yet in little they were owners and lords of all, so as nothing was left to be granted to the

[1] In particular the men of London and of Kent seem to have had all their former customs guaranteed to them.

[2] Sir J. Davies expressly contrasts the policy of William the Conqueror in England with that of his successors in Ireland.

[3] *Discovery*. Here Davies exaggerates. There were more than "ten persons of the English nation" among whom all Ireland was cantonised.

natives." And in his letter to the Earl of Salisbury dealing with the Plantation of Cavan he declares—"When the English Pale was first planted all the natives were clearly expelled, so as not one Irish family had so much as an acre of freehold in all the five counties of the Pale."

Sir J. Davies is an authority not always to be blindly followed. We can, however, check his statements from the lists of forfeiting proprietors in 1641. From these we find that in Louth, Meath, Dublin, Kildare, South Wexford, Waterford, there were practically no landowners of Irish descent.

In the beginning, no doubt, the process of confiscation—expropriation as some modern writers prefer to call it—was not complete. Mac Gillamocholmog was left in possession of much of south County Dublin. The country round Ferns was left to Murtough Mac Murrough.

The Irish proprietors were not expelled from portions of Westmeath, Ossory, and Leix.[4] But their tenure was precarious. They were allowed to retain the more inaccessible and barren districts until such time as the settlers might feel able and willing to occupy them. Dr. Bonn declares that the law held all the Irish, except "the five bloods," to be villeins, and so incapable of holding freehold estates.

The position, in fact, of those whose lands were not occupied by the settlers was singularly like that of the natives in Rhodesia at the present day. As long as it suited the ruling class they might

[4] Orpen: *Ireland under the Normans*, Vol. II., p. 133.

occupy certain districts, paying whatever rent or other dues might be extracted from them. But at any moment colonists might settle on these lands, driving them off altogether, or allowing them to remain in a more or less servile condition.

Modern writers seem to hold that the Irish ought to have been, or actually were, satisfied with this state of affairs, just as eels are said to like being skinned.[5] The lower orders, we are told, benefited immensely by the more settled government, with its ensuing security, brought in by the settlers. But this view takes no account of the loss of property and position suffered by the free clansmen. No doubt the servile classes did rise in position, or, what was much the same, saw those who had been their superiors depressed to their own level.[6] But to the free clansmen, and above all to the leading families, the new state of affairs must have been intolerable.

A native Irish writer sums up the position tersely. The foreigners considered every foreigner noble even if he was ignorant of letters, and considered none of the Gael to be noble, even if he owned land. The most exhaustive account of the new order consequent on the Anglo-Norman Invasion is to be found in Dr. Bonn's *Englische Kolonisation in Irland*, a work indispensable to all students of Irish history.[7] He sums up the

[5] *See* Orpen and Knox.

[6] Pretty full records of the condition of the Irish tenants or rather serfs in the districts subject to the Anglo-Normans are now available in print: for instance in the "Pipe Roll of Cloyne," published in *Jour. Cork Hist. and Arch. Soc.*, 1914; Begley's *Limerick*, and elsewhere.

[7] Specially to be studied in this connection are his chapters III., IV., and V. in Vol. I. For a summary *see* pp. 128—9, Vol. I.

position of the Irish shortly—"der Ire war Sache, nicht mehr." "The Irishman was a chattel, nothing more."

Of course the natural result of this was to prevent any coalescence of the two nations. The Irish had to submit to loss of land and of personal liberty, or to fight. Naturally they chose the latter course, helped as they were by the difficult nature of the country, the small numbers of the settlers, and very soon by the feuds of the newcomers. The weakness of the central government soon became apparent. The settlers by themselves were not strong enough to effect a thorough conquest. The Irish learned military skill from the invaders, courage they had never lacked. The result was that some hundred years after the first invasion the Irish began to hold their own; half a century later they began to win back from the colonists the lands which they had lost.

Nor could the Kings of England win over the natives and blend both peoples into one nation by granting to the Irish the protection of the English laws, or by giving them a legal title to the lands still in their occupation. The former course was made impossible by the opposition of the colonists; and the Crown, having granted away practically the whole island to the settlers, was debarred from the latter. The result was that at the opening of the reign of Henry VIII., close on three and a half centuries after the first invasion, the island was divided very unequally between the two nations. About one-third was held by the descendants of the colonists,

MAP II.

Ireland under Henry VIII.

(Irish Territories unshaded).

the remainder was entirely in the hands of the Irish.

Of course during this long period a certain amount of assimilation of the two races had taken place. Inter-marriages had become fairly frequent. A very large number of the settlers had adopted Irish laws and manners, and ruled their lands after the fashion of the Celtic chiefs. Nearly all of them had learned the Irish tongue, having in many cases completely abandoned the French or English of their forefathers.

Here and there, too, we find Irish landholders in the districts occupied by the settlers. There were such under the Butlers in south and mid Tipperary, under the Desmonds in Limerick, under the Barrys in Cork.[8] But the number of these was few, and it is noteworthy that the "degenerate" Anglo-Norman Burkes of Mayo and Galway had left scarcely any native landowners in the districts subject to them.[9]

And as regards the mass of the Irish, those of them in the districts subject to English rule had obtained some at least of the rights of citizens. At any rate they could no longer be murdered with comparative impunity.[10]

But viewing the island as a whole, we may distinguish between districts in which all the landowners were of Anglo-Norman descent, and others

[8] This appears from the Books of Survey and Distribution, and other Cromwellian Records. In Tipperary O'Neills and O'Fogartys; in Limerick, MacInnarighs or MacEnerys and O'Hurleys may be cited.

[9] *See* Knox; *History of Mayo.*

[10] Bonn, Vol. I., pp. 138—9. At first the murder of an Irishman entailed as only penalty the payment of damages to the English lord of such an Irishman, if he had one.

which were entirely in the hands of the native Irish. In the former districts we must distinguish between those parts, such as the four counties of the Pale, the south of Wexford, Waterford, Kilkenny, &c., where English laws of inheritance prevailed, and those others such as Mayo and Galway in which the settlers had completely adopted Irish customs, and where the inheritance of land was in accordance with the Irish customs of tanistry and gavelkind.

As regards the districts in Irish hands the chief point to be noted is that the Irish element was quite free from any foreign admixture. Some countries such as Tirconnell and Tirowen had never been occupied by the invaders; in others, such for example as Sligo and north Tipperary, the settlers had been altogether rooted out.

Common to the whole island was an almost complete divorce between occupancy of the land and the legal ownership of it. The whole of Ireland had been parcelled out among the invaders, and the claims of their descendants still held good in law. No length of occupation could give a valid title to an Irishman to any lands ever held by an Englishman. Even where there had never been effective occupation it would seem doubtful whether any Irishman could claim a legal estate.

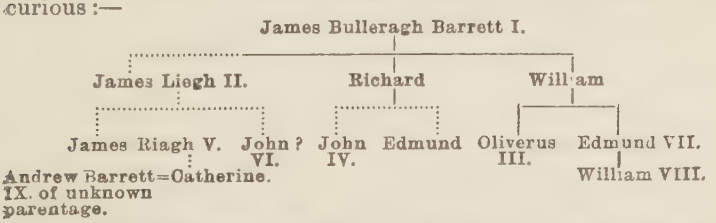
And in the districts in the hands of the colonists there was a great confusion as to title. The Burkes of Connaught held their lands in defiance of the law, and disposed of them according to tanistry as regards the chiefs, and to gavelkind as regards the lesser proprietors. The title of the Desmonds to their vast possessions was more than

questionable. Irregular marriages, illegal alienations had thrown doubt on the titles of many of the minor lords.[11]

All over the island reigned confusion, which could only be put an end to by the intervention of the Government.

When Henry VIII. determined to do in Ireland what he had successfully done in Wales—namely, to unite settler and native in one commonwealth, the following was the state of landed property in the island. Two-thirds of the country was in the hands of the old Irish, who, in the eyes of the law, had no title to the lands they held. The other third was in the occupation of descendants of the settlers. West of the Shannon the De Burgos and all their following held their lands in defiance of the Crown. They had completely abandoned English law, and dealt with their lands after the Irish laws of tanistry and gavelkind. East of the Shannon the lesser proprietors of English descent as a whole held their lands by titles valid in Eng-

[11] *See* the extraordinary accounts of the marriages or want of marriages, and the ensuing family murders, in the case of the Barretts, of Co. Cork, as given in the Calendars of State Papers. The following rough sketch of a pedigree is curious :—



The numerals give order of succession of chiefs; dotted lines denote alleged illegitimacy.

These statements were made in the course of a dispute as to the lands, and are not to be implicitly believed. But they must have had some foundation in fact.

lish law; but the titles of the great lords, as I have said above, would too often not have stood an investigation conducted on the lines of the English laws of inheritance.

Henry at once grasped the necessity of a settlement of the land question. As heir to the vast Mortimer inheritance he was already owner of Ulster, Connaught, Leix, and other lands. Here he could give legal titles to the actual occupiers, whether Irish or Anglo-Irish. But over the rest of the island any policy of settlement and reconciliation was hampered by claims of the settlers to lands actually held by the Irish.

The rebellion and forfeiture of the house of Kildare, and the famous statute of Absentees, greatly simplified this difficulty as regards Leinster and Munster, and left Henry free to deal directly with the Irish clans.[12] It has often been said that what he did amounted in reality to a concealed system of confiscation. The lands belonging to the clan were to be handed over to the chief, and in case of his rebellion would then be seized and divided among English settlers. I have dealt with this theory elsewhere.[13] It is sufficient to say here that, though in certain cases this was the actual result of Henry's settlement, there seems no evidence that he intended to vest in the chiefs the lands of their clansmen. As a matter of fact the lands of the O'Tooles of Powerscourt were divided among the clansmen, and again in negotiations

[12] 1537. It vested in the Crown the lands claimed by the Duke of Norfolk, the Lord Berkeley, the heirs general of the Earl of Ormonde and others.

[13] "The Policy of Surrender and Regrant," *Jour. R. Soc. of Antiquaries*, Vol. XLIII., 1913.

with the O'Conors of Offaly—negotiations which unluckily were never brought to completion—the intention was to provide for all claimants to land under Irish custom.

We clearly see, both from the Composition of Connaught in 1585, and from the Books of Survey and Distribution, that the effect of Henry's grants to O'Brien of Thomond and Mac William Burke of Clanricard, was to give them a title good in English law to the *lordship* of their countries, with the various rights and profits attaching to it, and to the *landlordship* of the actual castles and demesne lands set apart by the clan for the defence of the territory and the support of the chief. There was of course some injustice here, for of these castles and lands the chief was only a trustee, so that at his death they went or should go to his successor by tanistry : whereas by the new arrangement they were to go on his death to his heir according to English law. But this was an injustice more theoretical than real, and can only have affected the immediate kinsmen of the chief.

The confiscation of the possessions of the House of Kildare and its adherents, and that operated by the Statute of Absentees are the only instances from the reign of Henry VIII. But no "plantation" or introduction of any new strain into the population followed on them, and the effect if not the intention of the latter seems to have been to improve the position of the native Irish occupants of the lands claimed by the forfeiting absentees.

But Henry's grants[14] contained in them the germ

[14] Henry made grants to O'Brien of Thomond, MacWilliam of Clanricard, O'Neill of Tyrone, O'Shaughnessy, Mac-

of future troubles. In the first place, for some reason unknown to us, they were few in number; and secondly they were so vaguely worded that unscrupulous chiefs, or unscrupulous officers of the Crown, were able at a later period to maintain that the grants actually did give to the chief the *landlordship* of the clan lands.

With the reign of Mary we come to the first actual case of confiscation accompanied by the dispossession of the occupants of the land, since the days of the invasion.[15]

The territories of Leix and Offaly lay near to the borders of the Pale, touching for a considerable stretch the lands lately subject to the Earl of Kildare. Leix, the south-eastern portion of the modern Queen's County, had been occupied, in part at least, in the early days of the conquest. In the division of the great Marshall inheritance it had come to the Mortimers. But as Friar Clyn tells us, Lysaght O'More "had forcibly expelled the English from his lands and patrimony, for in one night he burned eight castles of the Englishmen, and destroyed the noble castle of Dunamaise belonging to Lord Roger de Mortimer, and usurped to himself the dominion of his fatherland. From a servant he became a lord, from a subject, a prince." Lysaght died in 1342. The Mortimer

Namara, MacGillapatrick, and the O'Tooles of Powerscourt and of Castlekevin. Earl Hugh O'Neill claimed that the grant to Con O'Neill made him landlord of all Tir Owen (*see Cal. St. Papers*, 1606, p. 210). O'Shaughnessy in Cromwell's time appears as owner of the whole clan territory.

[15] Of course when, in the fourteenth century the Irish recovered lands from the settlers they slew or expelled the foreign occupants. This was the case notably in north Tipperary, in Leix, and in most of Carlow also. This of course from the settlers' point of view was "confiscation."

claims passed ultimately to the Crown. But, in spite of vicissitudes of fortune, for two centuries Lysaght's descendants ruled from the rock of Dunamaise.

Irish Offaly, as it is sometimes called to distinguish it from that part of the ancient territory now included in Kildare, was held by the O'Conors and their subject clans the O'Dempseys and the O'Dunnes. The latter held the barony of Tinnahinch, in Queen's County, the O'Dempseys held Portnahinch in Queen's County and Upper Philipstown, in King's County; the lands directly under O'Conor comprised the remainder of the eastern part of the modern King's County.[16]

The O'Conors had been close allies of Silken Thomas in his rebellion. Vigorous campaigns and family quarrels greatly reduced their power, and during the later days of Henry VIII. we find alternate hostilities and negotiations going on between them and the Government.[17] At one time it seemed likely that the chief would be made a baron, and that his brothers and all other possessors of lands should obtain legal titles for themelves, and their heirs.[18] Unluckily for the O'Conors this was never brought about. Renewed hostilities under Edward VI. led to the complete overrunning of their lands, and the exile of both O'Conor and O'More, who finally surrendered to

16 The rest of King's County was held by O'Molloy, MacCoghlan, O'Carroll, and the Shinnagh or Fox.

17 See the accounts of the capture of O'Conor's new and splendid castle of Dangean. The Irish had just begun to build elaborate castles when the introduction of moveable artillery rendered them useless.

18 *State Papers, Henry VIII.*, Vol. II., pt. 3, pp. 328 and 560.

the authorities and were sent to England, where O'More died.[19]

This was the first considerable success obtained by the English over the old Irish for more than two centuries, and accordingly the project was formed under Edward VI., and materialised under Mary to extend the shire ground, and secure it by a settlement of men of English blood.

As to the title of the Crown to the lands, Offaly had been claimed with more or less of legal right by the Earls of Kildare, and by their attainder their rights were vested in the Crown. Leix as part of the Mortimer inheritance already was Crown property. The fact that the O'Conors had never been dispossessed of their lands and that the O'Mores had recovered theirs two centuries before was not allowed by the authorities to have any weight, since as alien enemies the Irish had no rights valid according to English law.

The era of confiscation by legal subtleties had, however, not begun, and Parliament contented itself with vesting in the King and Queen the countries of Leix, Slewmarge, Offalie, Irry, and Glynmalire, merely asserting that these lands were their Majesties', and making no attempt to prove any title.[20]

Another Act gave power to the Deputy, the Earl of Sussex, to dispose of the lands to all and every of their Majesties' subjects, English or Irish

[19] Bellingham in 1548 overran the territories and built forts.

[20] *Third and Fourth Philip and Mary*, Chaps. 1 and 2.

A very full account of the proceedings with regard to Leix and Offaly, by Mr. R. Dunlop, is to be found in the *English Historical Review*, 1891.

"borne within this realme, or within the realme of England."[21]

It is to be noted that for the first time since the invasion power was given to make provision for the Irish. Leix was to be divided, according to a subsequent project, between the original inhabitants and settlers whether from the Pale or from England, and such of the natives as were considered fit to receive grants were to be made freeholders.[22]

Already, three years before Mary's accession, there had been a plan for a settlement put forward by some of the gentry of the Pale. Some settlers had already penetrated into these districts, but this had only led to a new outbreak of the Irish, who were not subdued until 1556.

It is to be noted that the land of the O'Dunnes—Iregan—is not mentioned in the Act of Confiscation. This territory, in fact, was left in the hands of the Irish until the reign of James I. And although Clanmaliere, the land of the O'Dempseys, was included in the confiscated area, no effectual confiscation ever took place. O'Dempsey, following the usual fatal policy of the petty Irish chiefs, broke away from his lord, O'Conor, and made terms for himself. In 1563 the then O'Dempsey received a grant which made him owner in fee of all the lands of his clan.[23]

The rest of Offaly, and Leix and Slewmargie[24] were divided among English and Irish grantees.

21 *Third and Fourth Philip and Mary*, chap. 1.

22 Mary in 1554 had released O'Conor at the prayer of his daughter, who, we are told, was skilled in the English tongue, and who went over to England to plead in person for her father.

23 Fiants, Eliz.

24 This is the south-east part of Queen's County.

But the Irish did not tamely submit to any encroachment on their lands.[25] Insurrection followed insurrection—eighteen separate risings are counted between Sussex's first plantation and the death of Elizabeth. Again and again the O'Mores expelled the colonists, broke down the forts, and raided far and wide into the adjoining lands. But the power of the state, helped as it was by jealous neighbours, proved too strong in the end. After half a century of warfare, carried on with the most barbarous cruelty, the remnant of the free clans of Leix, less than three hundred persons all told, were transplanted into Kerry, where Patrick Crosby, the descendant, if we are to believe Irish accounts, of O'More's harper, who had risen on the ruins of his former masters, undertook to give them lands on an estate which he had acquired near Tarbert. Of the O'Conors, most of the chief perished in these wars, a few retained some portions of their former territory.

The new settlers, though reputed English, were often, it must be remembered "mere" English of the Pale. Many, if not most of them, were Catholics. As such their sons or grandsons took part in the wars of 1641—51 on the side of the Confederate Irish, and were duly, as Irish Papists, deprived of their estates by Cromwell.

The reign of Elizabeth is marked by two confiscations on a great scale. The first, that which followed on the death of Shane O'Neill, was only a confiscation on paper, but, on account of its

[25] The conditions imposed on the Irish grantees were indeed of such a nature that it would have been almost impossible for them to keep them faithfully.

importance in following years it deserves careful study.

Henry VIII. had paid some regard to Irish usages in his dealings with the chiefs. Murrogh O'Brien, last King and first Earl of Thomond, was to be succeeded in the Earldom and the lordship of the country not by his son, but by his Tanist, Donough, son of Murrogh's elder brother and predecessor, Conor. Murrogh's son was to be contented with a lesser title, that of Baron of Inchiquin. In a similar fashion Con O'Neill was allowed to select a successor to his dignities, to be named in the patent of the Earldom. For some reason unknown to us he passed over his legitimate sons, and chose as his successor a certain Ferdoragh, *anglice* Matthew, who was certainly illegitimate, even if he were really Con's son at all. At Con's death the clan rejected Matthew, and chose Shane as O'Neill. He held his ground and compelled Elizabeth to recognize him virtually as lord of almost all Ulster.

But after his tragic downfall and death an Act was passed in 1569 for his attainder.[26] This Act is something of a literary curiosity.

It must be remembered that according to the strict letter of the law Ulster already belonged to the Crown, in right of the Mortimer inheritance, and no title to land therein could be valid in law unless derived from the Crown, the Mortimers, or their predecessors in the Earldom. Now, in the early days of the conquest great parts of Down and Antrim and some of Derry had been overrun and settled. In the fourteenth

[26] XI. Elizabeth, chap. 1.

century, however, a branch of the O'Neills—O'Neill of Clandeboy—had expelled most of the settlers, and seized the greater part of the district east of the Bann and Lough Neagh. Some remnants of the settlers remained in the peninsulas of Lecale and the Ards in Down; and in Antrim the lands along the coast at one time held by the Missetts or Bissetts were claimed by a branch of the Scotch MacDonalds in virtue of the marriage of one of their chiefs to a Bissett heiress. As the MacDonalds were alien enemies it is doubtful if this claim was good in law.[27]

But in the rest of Ulster matters were different. Here, whatever grants may have been made by De Courcy or the De Burgos, no permanent settlements had ever been made, and the native Irish had never been dispossessed. Furthermore, by accepting rent or tribute from some at least of them their position as landowners had to some extent been recognised. And Henry VIII. had received all the chiefs as subjects, and hence, implicitly at least, recognised their rights to the territories they held, although in only one case, that of Con O'Neill, had he secured those rights by an actual grant.

The Act of Attainder gets over all these difficulties with considerable ingenuity. It traces the Queen's title to Ireland and Ulster from King Gormund, second son of the noble King Belin of Great Britain (both needless to say entirely unknown to history) then gets to surer ground with the "conquest" of Henry II., then comes to the

[27] This branch of the MacDonalds ultimately became known as MacDonnells.

grant to De Courcy, and the subsequent devolution of the earldom of Ulster through the Mortimers to the Crown. Incidentally it makes the quite untrue statement that the Act of Absentees vested in the Crown the earldoms of Ulster and Leinster.

Then, having to the satisfaction of the faithful commons proved that Ulster belonged to the Crown, it with curious want of logic proceeds to enact that Tyrone, Clandeboye, O'Cahan's country, the Route, the Glynnes, Iveagh, Orior, the Fews, Mac Mahon's, Mac Kenna's and Mac Cann's countries shall all be vested in the Crown, thus tacitly excluding Tirconnell and Fermanagh.[28] The truth seems to be that Elizabethan lawyers had not yet arrived at that total disregard for the equitable rights of the Irish that marked those of the Stuart period. They seem to have felt the injustice of attempting to deprive the Irish on a mere legal quibble of those lands which they had held without question since the days of Henry II. Hence the enacting part confined itself to confiscating the lands of those Irish who had actually been in rebellion under Shane.

Furthermore, since many of the lesser chiefs of Ulster had manifestly followed Shane only on compulsion, the Queen is prayed to deal leniently with the survivors, and to grant to them such portions of their said several countries to live on by English tenure "as to your Majesty may seem good and convenient." Finally, the Act saves the

[28] Cavan was at this period included in Connaught. The O'Donnells of Donegal had been on the side of the Crown against Shane; and the Maguires of Fermanagh had apparently broken away from him before his death. Both O'Donnell and the Earls of Kildare put forward claims to some or all of Fermanagh.

right of all "meere English" who had rights before the 20th of Henry VIII.

This Act seems to have altogether ignored the rights of Hugh O'Neill, Baron of Dungannon, son of Matthew, to whatever had been granted to Con. Furthermore, it avoided the difficult question as to what lands had belonged to Shane and other chiefs, and what had belonged to the clansmen, by confiscating everything except the church lands in the countries named. At a later date we shall see what advantage was taken by James the First's lawyers of the sweeping provisions of this Act.

The government soon made it known that it did not intend to take any steps to interfere with the lands of the Irish who had submitted. Turlough Lynagh O'Neill, who had been chosen by the clan as Shane's successor, was received into favour, together with all the other chiefs who, more or less on compulsion, had followed Shane.

In spite of this pacific policy advantage was taken of the Act to try some experiments in actual confiscation and colonisation in Ulster. Grants of portions of the lands east of the Bann and Lough Neagh were made first to a certain Smith, then to Walter Devereux, Earl of Essex. But these attempts at confiscation, after much labours, and atrocities almost past belief, ended in the death or ruin of the grantees, and so need not be dwelt on here.[29]

[29] See in this connection the tale of the murder of Sir Brian MacPhelim O'Neill, of Clandeboye, his wife, and his followers —"young men and maidens" and of the six hundred women and children of the MacDonnells slain in Rathlin Island as told by the Four Masters and by Froude in his *Reign of Elizabeth*. There was also a grant of part of Co. Armagh to a certain Chatterton, which proved equally ineffectual.

But though Ulster was left for a time undisturbed, in Munster a vast scheme of confiscation and settlement took shape. It is not clear whether the first steps were due to private enterprise, or to the initiative of the government.

A knight of Devonshire, a certain Sir Peter Carew, put forward claims to estates in Carlow and Meath, and to the moiety of the "Kingdom of Cork" as granted by Henry II. to Robert Fitzstephen. His claim to the barony of Idrone in Carlow,[30] and to an estate in Meath actually held by a certain Chevers was upheld by the courts.

It is the fashion to ridicule his claim to lands in Munster. To recognize it was contrary to the principles which had guided Henry VIII. in his dealings with Irish land, and the Tudors in general followed Henry's policy in this respect. But it was certainly the kind of claim that the Crown lawyers in the later days of James I. would have taken up with avidity. With the more accurate knowledge of the history of the early settlers which has been made possible in recent years we can no longer blindly accept the statements made by former writers that the Carew claims had already been investigated and set aside.

We need not accept the mythical "Marquess Carew" who, before such a title was known in England, held part of the coast line of Cork, and "gave his name" to the castle of Dunamark.[31]

But there had been Carews with great posses-

[30] This was actually in possession of the MacMurrough Kavanaghs. An agreement was come to with them after a certain amount of disturbance.

[31] The whole question of the Carew claims would be a useful subject for study.

sions in south-west Munster, although several generations had passed since any of them had had any effective occupation of the districts in question. At the moment the Earl of Desmond, who held a large part of the Fitzstephen and De Cogan inheritance, and claimed to be rightful owner of most of those parts of Cork and Kerry actually held by the Mac Carthys and their subject clans, had, to escape a worse fate, surrendered all his estates to the Queen. It was not yet certain whether she intended to pardon him and restore the lands; and to Carew and certain friends and neighbours of his the opportunity seemed a favourable one to obtain riches for themselves, and to establish the English power securely in all the sea coast from Cork to the mouth of the Shannon.[32]

Accordingly propositions for a confiscation and settlement on a great scale were put forward, whether suggested in the first place by the government, or by the gentlemen adventurers is not clear. The immediate effect was a rebellion, sometimes known as the first Desmond rebellion, sometimes as the Butlers' wars, in which the Mac Carthys and the Butlers for once united with their hereditary enemies the Geraldines.

Under the leadership of Sir James Fitz Maurice Fitzgerald, a near kinsman of the Earl of Desmond, the rebellion lasted for some three years, and deluged Munster in blood. The Butlers and Mac Carthys soon fell away from the combination,

[32] Froude gives a detailed, and perhaps too highly-coloured account of this colonisation scheme. It came to nothing, and it is doubtful if it was ever really accepted by the government. *See* a letter of Sir Peter, *Car. Cal.*, 1573.

and made their peace with the Crown, leaving Fitz Maurice to carry on an unequal struggle alone. The whole story is told vividly, though inaccurately, by Froude. The rebellion so far achieved its object that all plans for a confiscation and plantation were dropped; and so the subject need not detain us.

Sir Peter Carew died in 1575, and we hear no more of his claims in Cork and Kerry.[33] The lands which he had recovered in Idrone passed to his nephew, and then by purchase to the Bagenals, a family of English settlers. The head of this family was executed as an Irish Papist guilty of murder in 1641, by the Cromwellian government, after the submission of the Irish forces in Leinster, another curious instance of how the Protestant planter of one generation turns into the Irish Papist of the next.

At the Restoration it was held that he had been unjustly put to death and the lands were restored to his children.

The second confiscation on a large scale during the reign of Elizabeth followed on the suppression of the great Desmond rebellion in 1583.

The procedure adopted on this occasion is worthy of close attention, especially as it is misrepresented in most of our histories. We constantly read statements to the effect that the vast estates of the Earl of Desmond and his

[33] Sir Peter seems to have maintained his claims to the end; but he would appear to have been ready to be satisfied with a head rent from the Anglo-Norman lords and Irish chiefs who were in actual possession of the lands he claimed.

In 1603 Thomas Wadding writes to Sir George Carew on Sir Peter's title in terms that suggest that he hoped Sir George would prosecute the claim. *Car. Cal.*

adherents, covering half of three counties, and amounting to half a million acres, were confiscated and divided among English "planters." As a matter of fact the three counties of Cork, Kerry, and Limerick have an area of over 3,600,000 acres, and of this extent at the outside 400,000 English acres were finally confiscated.[34]

The whole question of the actual extent of the Desmond estates, their claims and their title to the lands which they either held or claimed is an intricate one, and would be a subject worthy of investigation. Here we may say that through royal grant, or as heirs of the De Cogan moiety of the "Kingdom of Cork" or by purchase or marriage the Earls held central Kerry, the Baronies of Kerrycurrihy, Imokilly, Kinnatalloon, and other large territories in Cork, most of Limerick west of the Maigue, and large tracts east of that river, the western baronies of Waterford, and several manors in Tipperary. In addition they put forward claims more or less well founded to supremacy over the native Irish clans who under the two great branches of the MacCarthy house, MacCarthy Mór, and MacCarthy Reagh, held all west Cork and south Kerry, as well as to the lordship over some of the "degenerate" Anglo-Norman families in these counties and in Limerick.

If we go back to the flourishing days of the Anglo-Norman colony in the reigns of Edward I. and Edward II. we find these possessions divided

[34] Dr. Bonn puts it that 577,000 acres were held at first to have fallen to the Crown, and that of these finally only 200,000 acres were confiscated. He does not say whether these were Irish or English acres. If Irish the figure would be over 320,000 English acres. But in the loose calculations of those days we must always allow for under estimates.

up into manors. In each manor the chief lord had a castle, the head of the manor, and a certain extent of land in demesne, worked by servile or semi-servile labour, while other portions were held by free tenants, either by Knight's service, or for fixed rents with various defined obligations towards the lord.[35]

In the sixteenth century this state of things persisted in outline, although much overgrown and disguised by Irish usages, and by innovations which had grown out of the lawless state of the country. On the demesne lands of the lord lived a mass of cultivators, mostly of Irish origin, all tenants at will, or at best holding by Irish custom, which would not be recognised by English law. Many of these were still for all practical purposes serfs, and looked on as such both by Irish and English; for villeinage lasted in Ireland long after it had disappeared in England, and was finally only abolished by Chichester in 1604—5. Others were in a better position, the descendants of the Betagii of the earlier inquisitions. These, though unfree according to English ideas, may have ranked among the native Irish as of free status, and economically may have been in a fairly good position, with rights of inheritance, and security against eviction, based on Irish law. Others again may have been to all intents and purposes personally free, belonging to recognized Irish free clans, but not having any permanent landed estates.

[35] Details about many of these manors in the thirteenth and fourteenth centuries will be found in Begley's *Diocese of Limerick*.

But in addition to the inhabitants of the demesne lands there were all those who could claim a freehold estate. Some were offshoots of the Geraldine house, others were descendants of those persons to whom the original tenants in capite had in turn granted large tracts to hold by Knight's service. These had manors of their own, with demesnes and dependent freeholders; they were bound to follow the Earl in war, and to render him other fixed feudal duties and payments. Then there was a very large number of smaller freeholders, mostly of English descent, all bound to pay fixed rents, and render certain services to the Earl. There were some Irish clans in this position.[36]

Then there were the dependent lords, such as the Fitzmaurices, Barons of Kerry or Lixnaw, and the Barretts of Co. Cork, who did not actually hold their lands from the Earl, but who, by more or less of compulsion, had been forced to pay him tribute, and follow him in war.[37] In this class, too, were some minor Irish clans, such as O'Conor Kerry, who had never been dislodged from their lands, but who acknowledged the suzerainty of the Earl.

Finally, there were the two great MacCarthy chiefs, with their multitude of subject clans, MacCarthy Reagh of Carbery, and MacCarthy Mór of Desmond. The former, it was claimed, was bound to follow the Earl in war, and to pay him yearly

[36] O'Hurleys and MacEnerys in Limerick.

[37] The Barretts of Cork had bound themselves by indenture to pay the Earl 12 marks yearly. But this they said had been imposed on them by force. From Clanmaurice the Earl had a money rent called "rent of the acres," amounting to £160 a year as well as 120 cows. *Cal. St. Paps.*, 1610, p. 433.

one hundred beeves.[38] Part of the lands of the latter—the baronies of Iveragh and Magunihy in Kerry—had actually been in possession of the Earl's ancestors in the thirteenth century. The MacCarthys had long since expelled the settlers from these districts, but the Earl still claimed superiority over MacCarthy Mór, a claim which the latter strenuously disputed, as well as a yearly payment of £214 11*s*. 2*d*.[39] Concerning this we know that portion of it was assessed on specified townlands in Bere and Bantry, but we may well have some doubts as to the regularity with which it was paid.

Now, the question at once arose—what of all this great inheritance had actually fallen to the Crown by the attainder of the Earl and his adherents?

Acts were passed (28th Elizabeth, Chaps. 7 & 8) attainting the Earl and a large number of his adherents by name. The second Act further attainted all who had died and been slain in their actual rebellion, or had been executed by martial law. But all who had survived the rebellion and who were not mentioned in these Acts had at one time or another been pardoned, and so, to use Sir J. Davies' phrase, "stood upright in law." Those attainted by name had almost all perished during the rebellion, and of the survivors some of the principals were afterwards pardoned.[40]

At first the idea of the Government was to take the widest possible view of the extent of the for-

[38] These Earl's beeves were paid by the freeholders of Carbery long after the death of the last Earl, to various grantees. See Cox: *Regnum Corcagiense.*

[39] *Cal. St. Paps,* 1581, p. 368.

[40] The White Knight, The Knight of Glyn, Patrick Condon, or their heirs were all ultimately restored to their lands.

feitures. It was estimated that 577,000 acres had fallen to the Crown. Even the great estates of Fitzgerald of Decies, who had rendered considerable services during the rebellion, were claimed on the ground of a flaw in the grant to his ancestor from one of the Earl's predecessors.

An extensive plan of colonisation was formed. Its details are so well known that we need not go into them. It is sufficient to say that over fifty great proprietors—all English and Protestant—were to be created, each of whom was within a given time to settle a specified number of English families, some as freeholders, some by lesser tenures, on his properties. Irish tenants, if allowed at all, were to be moved from the wilder and more inaccessible lands, and to be settled in the open country, where they would be less able to give trouble.

At once a chorus of protest arose from those freeholders of English descent, who saw themselves affected by the new project. It was claimed on behalf of the Crown that as these lands had yielded to the Earl all sorts of Irish exactions—cuddies, cosherings and refections, bonnaught, horses' meat, and dogs' meat, and all the long lists of "cuttings and spendings" which we find so often quoted in the State Papers, the occupants were merely tenants at will. But against this the occupants protested. The Cogans, Cantons, Supels alias Capels, Poers and Carews in Imokilly showed ancient charters proving their title to their lands before Desmond or any Geraldine had any footing in those parts.[41] All uncertain charges

[41] *Cal. State Papers*, 1589, p. 256.

which they had yielded to the Earl had but been extorted by force, and they had always protested against them.

Even in the case of those exactions which at first sight seemed to English officials most arbitrary, there were certain fixed limits outside of which the Earl did not go.[42]

Long disputes raged round these points. Various commissions were sent to Munster to determine the matter. The report of the first was distinctly adverse to the old inhabitants. But these did not submit and the controversy went on until the year 1592, nine years after the Earl's death. It was decided finally in favour of the old inhabitants. All who could make reasonable proof of being freeholders were secured in their property, paying to the Crown or to the Undertakers whatever fixed rents and services they had paid to the Earl, and compounding at a certain sum for all the uncertain payments which did not clearly rest on mere extortion.[43]

The result was that, instead of the estimated 577,000 acres, only 202,000 were confiscated and given to the Undertakers.[44] So far, therefore, was the project of a great English colonisation defeated. Besides, those "Undertakers" who

[42] See for the case of the "chargeable lands" *Cal. State Papers*, 1589, p. 256. *Ibid.* May, 1592, p. 528, for very clear directions as to what should be done. *Ibid.* Oct., 1592, p. 3 for account of the proceedings of the Commissioners. *Car. Cal.*, 1594, p. 102, gives instructions to the final set of Commissioners for granting lands to the Undertakers.

[43] Even where they did rest on extortion, but yet had been paid from of old, if they were certain rents they were to be paid to the Crown.

[44] These are Dr. Bonn's figures. I cannot find, however, where he gets his 202,000 acres; possibly by adding up the acreage of the actual grants. The acres were probably Irish.

finally secured lands did not fulfil the conditions laid down for them; far fewer English families were brought over than had been arranged for, and Irish tenants were brought in to fill the gaps. Of some thirty "Undertakers" only thirteen actually inhabited their properties in 1592,[45] and they had only "planted" two hundred and forty-five English families on their lands.

Yet, especially in County Limerick, a fairly considerable English element was introduced, much less, however, than our popular histories would lead one to believe. In 1611[46] the total armed force of the colonists only amounted to 196 horse and 537 foot. A curious feature, too, is that in 1641 a large number of the descendants of the "Undertakers" were Catholics. As such the Brownes of Killarney, the Spensers in County Cork, the Fittons of Any, the Walshes of Owney, the Thorntons and the Rawleys (these last said to be kinsmen of Sir Walter Raleigh) were all deprived of their estates by the Cromwellian confiscation.[47]

Among the traitors attainted by the Act 28th Eliz., Chap. 7, were several chiefs of Irish clans. The MacCarthys, as hereditary enemies of the house of Desmond, had supported the Crown against the Earl. But the fact that MacCarthy Mór stood by the Crown was enough to throw some of the Irish clans who were nominally subject to him on the side of the Earl. So we find among the list of those attainted, MacCarthy lord of Sliocht Owen Mór of Coshmaing, O'Donoghue

[45] *Cal State Papers*, 1592.
[46] *Cal State Papers*, 1611—14, p. 218.
[47] The four families last-named were in Co. Limerick.

Mór of Ross, some minor MacCarthy chiefs in Bere and Bantry, and O'Mahony of Kinelmeaky in Cork.[48]

The attainder of these chiefs opens a new era in the history of confiscation in Ireland. None of them had had any titles from the Crown valid in English law. Yet it was assumed that they held the whole territory of their clan in demesne—an assumption quite untenable not only according to Irish law, but according to the admission of English lawyers in other cases.[49] Hence it was held that by the attainder of these chiefs all the lands of their clansmen had fallen to the Crown; and these lands were accordingly allotted to the Undertakers.

But here a totally unexpected difficulty presented itself. MacCarthy Mór claimed that the lands of Coshmaing, Eoghanacht O'Donoghue, Clan Donnell Roe, and Clan Dermond were his; and that the sub chiefs and all the inhabitants were only his tenants at will, and that therefore on the attainder of these chiefs the lands should naturally pass back to him. And a similar claim was put in by MacCarthy of Carbery to the lands of Kinelmeaky. These claims were utterly preposterous from the Irish point of view. Both O'Donoghue in Kerry, and O'Mahony in Cork had been in possession of their lands for centuries be-

[48] Three MacCarthys of Clan Donnell Roe, and one of Clan Dermond, both districts in Bere and Bantry, are mentioned.

[49] *Cal. State Papers*, 1591—92, p. 467. By the attainder of O'Rourke only his own lands came to the Crown, and the other great lords of Connaught, O'Kelly and others are in like case. "Not one acre of land (in Leitrim) but is ownered properly by one or other, and each man knows what belongs to himself." (*Ibid.*, p. 469).

fore the MacCarthys had had any footing in these counties. They were both free clans acknowledging the MacCarthys as Kings of Desmond, following them in war, and paying them certain fixed rents in money or kind. Even this much of subordination was denied in the case of O'Mahony.

But the great Irish chiefs had skilled lawyers at their command; they knew that their claims might be made to appear plausible in an English court; they had rendered very great services to the Crown; above all, since a verdict for them would undoubtedly have been to the immediate advantage of the clansmen in the lands concerned, they might hope for a favourable verdict if the case was submitted to a Cork or Kerry jury.[50]

And so we find that a Kerry jury duly found MacCarthy Mór's title to most if not all of the lands he claimed.[51] Coshmaing, Eóghanacht, and Clan Donnell Roe had, however, actually been set out to Valentine Browne and his son Nicholas who were in possession.[52] They were hard to move, and MacCarthy was an improvident drunkard without any legitimate male children. Accordingly a compromise was arrived at. In consideration of a sum of less than £600 the lands

[50] It was pretty certain that once MacCarthy Mór was in possession of the lands there would be no plantation of English settlers, and therefore no eviction of the clansmen. Unfortunately, however, MacCarthy's need of money made him come to terms with the Brownes, leaving them in temporary possession of the lands in dispute.

[51] It is not clear what happened as regards Clan Dermond. Part of this territory was in possession of the Earl of Cork in 1641, part in that of its own chiefs.

[52] On the death of MacCarthy Mór at the final settlement with the claimants to his estates it was decided that all claims of his to lands in Clan Donnell Roe, Bere, Clan Dermond, and other places were to be extinguished. (*Car. Cal.*, 1599, p. 301).

in question were mortgaged to the Brownes, and the latter got a Crown grant securing the lands to them on the death of the Earl without heirs.

How the omission in the grant of the word "male" before the word "heirs" appeared at first sight to defeat the hopes of the Brownes, and how an almost endless contest dragged on on account of this between the Brownes and Florence MacCarthy, husband of MacCarthy Mór's daughter Ellen, and his son has been told at length in the "Life and Letters of Florence MacCarthy Mór." It is enough here to say that in the teeth of numerous decisions against them the Brownes kept these lands, which up to lately formed the immense estates of their descendant the Earl of Kenmare.[53]

On the other hand MacCarthy Reagh of Carbery failed to make out his case with regard to Kinelmeaky, and that territory, estimated at two and a half seignories, *i.e.*, 30,000 acres, was set out to the Undertakers.[54]

The above are the first cases where the lands of an Irish sept or clan were confiscated on the pretext that they were the property of the chief. But this pretext was as a rule not adopted in the reign of Elizabeth. The policy, followed all through her reign, was to confiscate the property of all who actually perished while in rebellion, and to pardon the survivors. Now, apart from

[53] The statement in *Burke's Peerage* may be consulted as an example of inaccuracy.

[54] Full details of the confiscation of Kinelmeaky with the attempts of some of the O'Mahonys to recover possession, and with a somewhat one sided account of MacCarthy Reagh's claims are to be found in the *Journal of the Cork Archaeological Soc.*, 1908, p. 189.

As showing the looseness of Tudor calculations of area it may be mentioned that Kinelmeaky has 36,000 English acres.

questions of right or wrong, it generally suited the Crown better to recognise the clansmen as landowners. By following this policy a great amount of isolated confiscation took place all over the island, although nowhere except in Munster was there any confiscation on a sweeping scale.[55] And it is to be noted that, modern writers notwithstanding, there was a very considerable degree of leniency shown by the Crown even in the case of landowners who actually died in rebellion. Their lands were often granted to their sons or other immediate relatives.

To quote only one instance. When Donnell O'Sullivan Bere fled to Spain after his great march from Dunboy to Leitrim, his territory was not confiscated. The lordship of Bere, with the castles, lands, and rights attached to it, was handed over to Donnell's uncle, Sir Owen of Bantry, or rather to Sir Owen's son, another Owen. And we happen to have a list of the freeholders of Bere and Bantry made before the rebellion from which the remarkable fact appears that practically none of these were dispossessed, since in 1641 their representatives still appear as in possession.[56] This is entirely at variance with popular

[55] The *Cal. Pat. Rolls*, Jas. I., p. 115, gives a list of about seventy O'Byrnes whose estates, all mentioned by name, and mostly very small, some being only of two or three acres, were forfeited during the insurrections of Baltinglass and Tyrone.

[56] For Bere and Bantry the *Calendar of State Papers*, 1586—8, give details of the controversy between Donnell, and his uncle Sir Owen, lord of these countries by Irish law. *Morrin Calendar of Patent Rolls*, Eliz., 1594, gives the division of the lordship between them. The grant to Sir Owen, *Cal. Pat. Rolls*, IX., Jas. I., and the Down Survey and Books of Survey and Distribution show the state of these districts under the Stuarts.

notions. For instance, Mr. T. D. Sullivan in his "Bantry, Berehaven, and The O'Sullivan Sept" says: "The kinsmen of Prince Donal did not all quit the country after his overthrow: they were not all killed; what happened was that they were robbed, despoiled, disinherited." A glance at the list of landholders in Bere and Bantry in 1641 as given in the Down Survey—one of the maps of which he actually published—would have shown him the absurdity of this statement.[57]

Among isolated confiscations worthy of note are that of Idrone, which I have already spoken of, Shilelagh which I shall mention later on and the Mac Mahon territory of West Corcabaskin in Clare. The ground for this last was the death of the chief while in rebellion—he was accidentally killed by his son. His territory was handed over to Daniel O'Brien founder of the renowned line of the Viscounts Clare.

Furthermore Walter, Earl of Essex, obtained in 1575 a grant of the territory of Farney in Monaghan, an ancient Crown manor which for over a century and a half had been occupied by a branch of the Mac Mahons of Oriel, who held it, nominally at least, tenants of the Crown. Technically, therefore, there was no confiscation here.

To sum up; at Elizabeth's death the area of actual confiscation and colonisation extended to about half Queen's County, one-third of King's County, large and scattered territories in four of the six counties of Munster, and scattered estates in Connaught, Leinster, Tipperary, and Clare.

[57] So O'Rourke's lands after his execution at Tyburn were granted to his son.

On paper there had been a great confiscation of Ulster, but in reality this had only so far permanently affected the barony of Farney in Monaghan.

The accession of the Stuart dynasty ushers in a very different period.

CHAPTER II

THE PLANTATION OF ULSTER

With the death of Elizabeth, and the accession of the Stuarts, a new era opens in Ireland. To conquest by force of arms and accompanying confiscation succeeds confiscation based on legal subtleties.

At first matters seemed to go smoothly under James I. Earl Hugh O'Neill, who had submitted a few days after Elizabeth's death, was pardoned and restored to all his lands. Rory O'Donnell, brother and successor of Red Hugh, received an earldom together with a grant of all Tirconnell.[1]

In general all the Irish who had survived the rebellion were pardoned, and so secured in all their rights to land, whatever those might be. All the inhabitants of Ireland were admitted to the protection of the law, and made "denizens," thus sweeping away the old legal distinction between those of Irish and of English blood. Serfdom was abolished by a proclamation of the Deputy, Chichester, in March, 1605.[2] A commission[3] for

[1] Excluding Inishowen, which had been granted to O'Dogherty under Elizabeth: Fiant 5207; and also excluding certain lands to be given to satisfy the claims of Sir Neal Garve O'Donnell, and to supply certain English garrisons.

[2] This is quoted in part on p. 394 of Bonn's *Englische Kolonisation*.

[3] There were really two; one for strengthening of defective titles, the other for accepting surrenders from the Irish and "degenerate" English, and regranting estates under the Common Law.

the remedying of defective titles was set up, whose function it was to put an end to the confusion as to titles to land arising from the troubles of former years; and by its labours, as well as by direct grants from the Crown, a very large number of landowners of both races received titles to their estates which actually were, or which, at any rate, were supposed to be valid in law. The Deputy, with Sir John Davies and other dignitaries, undertook a journey in 1606 through Monaghan, Fermanagh, and Cavan to satisfy himself as to the actual rights to land of the chiefs and clansmen respectively in these districts.[4]

All this peaceful progress was put an end to by the "Flight of the Earls." Into the causes of this, perhaps one of the most fatal incidents in Irish history, we need not enter. Its immediate consequence, however, was a confiscation sweeping in character and far-reaching in its results. Probably no event has had such an influence in shaping the subsequent history of Ireland, and incidentally of England too, yet the accounts given in our current histories are as a rule inadequate if not actually misleading. For instance, we find school histories stating that the confiscation of Ulster was a penalty for the rising of O'Neill and O'Donnell under Elizabeth, and others holding that the Flight of the Earls vested in the Crown

[4] "But touching the inferior gentlemen and inhabitants, it was not certainly known to the State here whether they were only tenants-at-will to the chief lords . . . or whether they were freeholders yielding of right to their chief lord certain rights and services, as many of them do allege." (Sir J. Davies: *Letter to Salisbury*, 1606). The Deputy decided in favour of the clansmen. 1606 seems the true date of the Letter and the journey, although they are dated 1607 in Morley's *Ireland under Elizabeth and James I.*

the whole of the six "Plantation Counties."[5] Others again give most misleading accounts of the extent of the confiscation. All these points deserve attention.[6]

First, as to the actual state of affairs in Ulster at the moment of the Flight of the Earls. By law the present counties of Derry, Donegal, Tyrone, and Armagh were, except for the Church lands, practically owned in fee simple by five individuals, viz., the earls of Tirconnell and Tyrone, O'Dogherty, O'Hanlon, and O'Neill of theFews.[7] In these four counties then, Royal grants together with the greed of the chiefs had combined to deprive the clansmen of all legal titles to land. Rory O'Donnell had no sooner obtained a grant in general terms of Tirconnell than he induced all his subject chiefs to make surrenders to him, and to acknowledge him as owner in fee of the whole county. Even Mac Swiney na Doe, who, as a reward for his desertion of the Irish side during the rebellion, had got a grant of all the lands of his clan from Elizabeth, was induced to surrender this grant to O'Donnell.[8]

[6] For instance the Rev. Kingsmill Moore in his *Irish History for Young Readers* implies that the six counties were the lands of the Earls.

[6] Bright says "Three quarters of the worst land was restored to the Irish"; O'Connor Morris and Froude have substantially the same statement.

The *Spectator* habitually includes Antrim and Down in the "Plantation Counties."

[7] One or two of the O'Neills had been assigned estates independent of the Earl of Tyrone; and Neal Garve O'Donnell had been promised a large slice of Tyrconnell. It does not appear that he had received any patent for his lands. For the O'Neills see *Calendar of State Papers*, 1605, pp. 320 and following.

[8] See *Calendar of State Papers*, 1605, p. 320, for an account of Rory O'Donnell's proceedings. He had induced the Mac Swineys, O'Boyles, and "other ancient gents inhabitants of Tyrconnell, to surrender their several estates in their lands."

Earl Hugh O'Neill, on the ground of the loose wording of the original grant to Con, claimed all Tyrone and Derry, with much of Armagh. The claim was preposterous, and directly contrary to the interpretation put on the precisely similar grants to the Earls of Thomond and Clanricarde; it was strongly resisted by O'Cahane, lord of Derry; it was equally emphatically condemned by Sir John Davies, who had been ordered to report on the matter; but the question was still undecided at the date of the Flight of the Earls.[9] O'Dogherty and O'Hanlon had both received grants from Elizabeth, which had distinctly dispossessed the clansmen of all their rights.[10]

On the other hand the Deputy and his commission had but recently decided that in Cavan and Fermanagh the chiefs had had no rights under Elizabethan grants except to the lands and other privileges attached to the lordship, and that by far the greater part of these counties was the property, not of the chiefs, but of the clansmen.

O'Dogherty's rebellion gave the Crown a further chance to remove all native claimants to lands in Donegal, Derry, and Armagh. O'Cahane and Sir Neal Garve O'Donnell were imprisoned on the charge of complicity with O'Dogherty, a charge never proved; and O'Hanlon, whose son had joined O'Dogherty, and had been attainted, was induced

[9] *Calendar of State Papers*, 1605, pp. 320 and following for claims to freeholds in Tyrone by many gentlemen of the O'Neills and other septs. "They have ordered that those ancient gentlemen in Tyrone, and in all other parts of Ulster shall continue in their possessions until further consideration may be had of their estates."

[10] For O'Hanlon see Fiants: Elizabeth, 5090.

to surrender, in return for a pension, his life interest in his lands.[11]

Thus, four counties stood at the disposal of the Crown. Now, immediately after the departure of the Earls the Deputy had declared to the inhabitants of these counties that they would be no losers by the attainder of the fugitives, and that every man was to be confirmed in his own. At this period no great plantation appears to have been contemplated; the demesne lands of the chiefs would have supplied room for a certain number of settlers, leaving those Irish who claimed freeholds undisturbed. And to convict the Earls of treason juries of natives were summoned whom the Crown for its own purposes found it convenient to consider as freeholders.[12]

But, when after O'Dogherty's rising the idea of a great plantation took shape, this promise of the Deputy's was ignored, and to override the just rights of the natives a most ingenious argument was brought forward. If, said the Crown lawyers, the mass of the inhabitants of the four counties were—as O'Donnell and O'Neill had asserted—mere tenants-at-will there was no more to be said: plainly they had no rights. But if on the other hand, as O'Cahane and many of the chief men of the O'Neills had contended, and as Sir John

[11] O'Hanlon's son appears to have gone to Sweden. *Calendar of State Papers*, 1610, pp. 552—577.

The Fews were also held to be in the Crown; for, when the grant to Sir Tirlough Mac Henry O'Neill was made, the previous grant to Chatterton had not yet been avoided.

[12] Chichester's project for dealing with the forfeited lands was much more equitable than that finally adopted. He would have made ample provision for the native claimants of lands, and would have limited the plantation to the demesne lands of the chiefs, and to unoccupied lands.

Davies had held, the grants from Elizabeth and James had only affected the demesne lands and chief rights, then the Act of Elizabeth attainting Shane O'Neill was brought into play. It had explicitly confiscated three out of the four counties. Hence all the lands of the freeholders had by it fallen to the Crown, and if they had never since been granted to anyone—as plainly they had not been—well then they were still in the Crown.

So whichever set of facts was true the clansmen had no rights good in law!

In particular the Act attainting Shane O'Neill was made use of to confiscate the Church lands in Armagh, Derry, and Tyrone. The greater part of these had been from time immemorial occupied by certain Irish septs, who paid a certain yearly rent to the Bishops, as well as fixed fines and subsidies on special occasions.[13] Should one of these septs become extinct, the Bishop could not absorb the land into his demesne: he was bound to give it over on similar terms to certain other specified septs.

These facts after much controversy between the Crown and Montgomery, Bishop of Derry, Clogher, and Raphoe, were established to the satisfaction of the lawyers by findings of juries of clerks in each of the three counties. These findings can be read at pretty full length in the Calendars of State Papers,[14] and in extenso in the Patent Rolls of James I.

[13] See the inquisitions in *Calendar of State Papers*, and Sir John Davies, *Letter to Salisbury* in which he treats of Corbes and Erenachs.

[14] See *Calendar of State Papers*, 1610, pp. 552 to 577.

The decision was that the Irish septs inhabiting the episcopal lands enjoyed the freehold; the Bishop or other ecclesiastic had only fixed rents and services. But the Act before mentioned had confiscated the lands of all freeholders. Hence the Irish septs had no rights as against the Crown, and the Church lands were duly swept into the net.[15]

But, since Donegal, Fermanagh, and Cavan had not been included in the scope of the Act attainting Shane O'Neill, a different procedure was necessary in their case.

For Tirconnell the pretext was used that the King's patent had granted the whole country to the Earl, except those portions which had been specifically excepted; and that this grant included the lands of the erenachs "who had no estate by the laws of the realm, but held their lands according to the Irish custom."[16] Similar arguments were used with regard to the Church lands in Fermanagh and Cavan. It is significant that in all three cases the abstracts of Crown title are very brief as compared with those in the case of Armagh and Tyrone. It seems as if Sir John Davies thought that the less said on the subject the better.

Had the confiscation stopped at the four counties to which the Crown had made title as shown above, it is possible that it would not have left behind it such a feeling of cruel injustice. But

[15] These lands were ultimately regranted to the Bishops, with the proviso that they were to plant at least one-third with "Britons." See for Armagh *Calendar of State Papers*, 1610, p. 410.

[16] No doubt there is a reference here to the decision of the judges against inheritance by Gavelkind.

as the idea of a great plantation took shape, it was determined to include Cavan and Fermanagh in the forfeited area.

The rights of the chiefs in both counties had admittedly come to the Crown owing to the death in actual rebellion of Hugh Maguire and of three successive O'Reilly chiefs of Cavan.[17] But only a few months before the Flight of the Earls the Deputy had decided that the real owners of these counties had been, not the chiefs, but the clansmen. An elaborate enquiry had been held in Fermanagh, as a result of which it was estimated that about 5,000 acres had come to the Crown by the forfeiture of Hugh, as well as about 2,000 more set apart for the poets, chroniclers, &c., which were to be handed over to the two claimants to the lordship "in respect of the persons that merit no respect but rather discountenance from the State." In addition it was found that only two freeholders had perished during the whole course of the rebellion; for the "natives of this county are reputed the worst swordsmen of the north, being rather inclined to be scholars or husbandmen than to be kern or men of action, as they term rebels in this kingdom." This, incidentally, throws an unexpected light on "barbarous" Celtic Ulster.

[17] Cuconnaght Maguire had got a grant from Elizabeth in general terms. (Fiants Elizabeth, 4809). He was to permit the free tenants in the country to enjoy their lands, they rendering the rents and services accustomed. Hugh was son and successor to Cuconnaght. After Hugh's death his brother Cuconnaght succeeded as Irish lord, but a rival, Conor Roe, got a patent of the whole county as "Queen's Maguire." Then there was a plan for dividing the county, giving £140 a year chief rent to each claimant; seven others of the principal men were to have patents, and they were to be bound to make "such freeholds or leaseholds with such reservations as shall be thought fit." *Cal. St. Paps.*, 1607, p. 385.

The result of the whole investigation had been that over two hundred natives had been declared to be entitled to freeholds, although the Commissioners had arbitrarily cut out all who showed right to a smaller quantity of land than two "taths."[18]

By a mere accident the patents to these freeholders had never been made out. The same applied to Cavan, in which county Davies in 1606 had expressly admitted the existence of freeholders, although he has given us no details as to numbers.

Now, with absolute disregard to consistency or justice, all former findings and promises were ignored. On the pretext that the Irish customs of inheritance could not be reduced to agreement with the Common Law of England, the same Sir John Davies in 1610 declared that all the natives of these two counties were only tenants at will of the lords; and so, as the lords had been attainted, the whole of the two counties had fallen to the Crown.

Again, in 1610, we find the same Sir John Davies, who in 1606 had declared that not the chiefs but the clansmen were the owners, and who had laboured to persuade the natives of Cavan that their finding that O'Reilly had been seised of the whole country "in dominio suo ut de feodo et de

[18] In Fermanagh there were seven "baronies" (probably Irish Cantreds) each of which had 7½ Ballybetaghs of chargeable lands, besides free lands, *i.e.*, lands free from Maguire's rents and contributions. The Ballybetaghs had 16 Taths. In Monaghan the Tath or Tate had about 60 English acres, but Davies says that in Fermanagh the measure was far larger. He estimates Monaghan at 100 Ballybetaghs, containing in all 86,000 acres. The real area is:—Monaghan, 320,000 English acres; Fermanagh, 457,000 English acres. Each barony gave Maguire 42 cows.

jure" would not invalidate their claim to freeholds, now maintaining the exact opposite view, and quoting with approval the arguments with which the Crown lawyers had defeated the claims of the inhabitants.[19]

The details of the actual colonisation of the six counties are so well known that it is unnecessary to mention them here. There is, however, one feature of special note in the scheme. Every effort was made to keep the colonists and the original inhabitants distinct. British "Undertakers" were not to have any Irish tenants whatsoever: all Irish residing on the lands set out to them—by far the largest share of the six counties—were to be removed.[20]

The whole Irish population of the planted area was to be concentrated on the lands assigned to "servitors"[21] and to "natives." By what seems to be a concession of a date later than the original plan the Bishops might have Irish tenants on the Erenagh and other lands finally adjudged to them, provided that at least one-third of such lands was planted with Britons.[22]

In particular the lands granted to the Londoners in County Derry were to be cleared of the Irish

[19] See Davies: *Letter to Salisbury*, 1606, and to the same, 1610.

[20] According to one list, of the 511,000 acres at which the six counties were estimated, about 163,000 were assigned to Undertakers and 61,400 to the Londoners. Servitors got about 50,000, and natives just over 52,000 acres. Corporate towns, Trinity College, the Church, schools, certain favoured Irish, and certain grants of abbey lands not included in the general scheme account for the remainder. It must be remembered in each case that to obtain the true area we must multiply by seven in each case.

[21] "Servitors" were those who had served the Crown in Ireland.

[22] *Cal. St. Paps.*, 1610, p. 410.

population. Few Irish were to receive estates there, so that it was hoped that the territory might become an almost exclusively British settlement.[23] In the original scheme certain Irishmen were to have got 8,000 acres in this county on the petition of the Lord Deputy; but only 6,000 acres were actually allotted to them.[24]

Of course this attempt at segregation failed in the long run.[25] The new landowners could not cultivate their demesne lands without Irish labour; Irish tenants offered higher rents than could be obtained from British; these last could not always be obtained. At first extensions were obtained of the time limit before which the Irish occupiers were to remove. Then the new owners, by a policy of passive resistance, succeeded ultimately, in spite of numerous efforts on the part of the government, in evading this, one of the fundamental conditions of their grants. Finally in 1626 permission was given to take Irish tenants on a quarter of the

[23] In all documents dealing with plantations under James I. the term "British" is consistently used in contradistinction to "Irish." Scots, Welsh and English are of course all included under British. This is interesting in view of present day attempts to show that British includes Irish. The character given to these British settlers by one of their own clergy, the Rev. A. Steward, circa 1645—71, has often been quoted: "From Scotland came many, and from England not a few, yet all of them generally the scum of both nations,—who from debt, or breaking, or fleeing from justice, or seeking shelter, came hither, hoping to be without fear of man's justice in a land where there was nothing, or but little as yet, of the fear of God." Sir H. Maxwell's book *The Tweed* may also be consulted for the light it throws on the savagery of the Scottish borders at this period.

[24] *Cal. St. Paps.*, 1647—60, p. 204.

[25] Even in Derry there were a few Irish landowners in 1641: in 1622 we read of 1,824 Irish tenants, among them 300 gentlemen, on the lands of the Londoners.

Sir John Davies himself, that pillar of the law, had no British tenants on his Armagh lands at the time of Pynnar's survey.

Undertakers' lands, provided that they were given leases for life, or for twenty-one years, and that provision was made to force such Irish tenants to abandon the mode of life and the religion of their forefathers.

And so we find to-day the curious result that the two counties of Ulster in which the Teutonic and Protestant element definitely predominates over the Irish and Catholic are Down and Antrim, areas in which, up to the time of Cromwell, there was scarcely any confiscation, and no attempt at colonisation on the part of the government.[26]

The old Irish element persisted in the six plantation counties, intermingled with but distinct from the colonists. Religious distinctions kept the three races Irish, Scots, English apart.

[26] Here the colonisation from Great Britain was the result of private enterprize. Belfast and a certain area round it was treated as forfeited or as ancient property of the Crown and granted to Chichester. Kilultagh was granted to Sir James Hamilton and ultimately to Sir Fulke Conway. But the remainder of the two counties, except abbey lands, was either regranted to the former chiefs, or was held by settlers of old English descent who were not disturbed, or was granted to the head of the MacDonnells, a Catholic Scottish clan who for two centuries past had been establishing themselves on the coast. Iveagh was divided up among some forty-four of the chief clansmen.

More than one of the great Irish grantees soon parted with their lands to Britons. Particularly noteworthy is the case of Sir Con O'Neill of Upper Clandeboy, who by means set out at length in the Montgomery and Hamilton Manuscripts, was induced to make over two-thirds of his immense estates to two hungry Scotsmen, Sir Hugh Montgomery and Sir James Hamilton. The new landowners brought over large numbers of their countrymen. The country round Belfast had been nearly depopulated by the merciless warfare waged by Chichester, who as he himself tells us, slew all without any distinction of sex or rank whom he met with during his forays between 1600 and 1603 (see *Cal. St. Paps.*, 1599—1603, p. 356). The new settlers soon acquired lands under the remaining Irish owners. Of 13,092 men whom the British in Ulster could put into the field in 1633, 5,663 were in Down and Antrim. (Bonn, quoting from Gilbert, Vol. I., p. 278).

Up to 1641 it is certain that the Irish element greatly outnumbered the two others combined. The total of Protestants in Ulster at that date is estimated by Carte at 120,000 and by Latimer at 100,000.

The war of extermination which followed on the rising of 1641 must have gone far to alter the balance of races.[27] Yet in 1659 the Irish in all Ulster were to the combined English and Scots as $1\frac{1}{2}$ to 1.[28]

The years between the Restoration and the Revolution were marked by a large immigration from Scotland.[29] The Scots however took little foothold in Cavan and Fermanagh. The emigration of Presbyterians to America in the eighteenth century must have seriously weakened the Scottish element, as that of the 19th century has weakened the Irish. Woodburn holds that 200,000 people left Ulster for America between 1700 and 1760.

[27] One English regiment counted among its exploits during a very short period that in Fermanagh it had "starved and famished of the vulgar sort, whose goods were seized on by this regiment, 7000."

[28] Petty's Census, as quoted by Hardinge. But it is hard to believe that the total population of Ulster at that date was only 104,000.

[29] Also, according to Prendergast, there was a great immigration from Scotland between 1690 and 1698. He estimates it at 80,000 persons into different parts of Ireland, but chiefly into Ulster. (*Ireland from the Restoration to the Revolution*, p. 98).

Petty thought 80,000 Scots had come in since the Restoration. Woodburn appears to disbelieve in these figures, and with reason.

Archbishop Synge thought that 50,000 Scottish families had come in since the Revolution. This is hard to believe. The Hearth money returns give 62,624 Protestant families as against 38,459 Catholic families in 1732—33 (Bonn, Vol. II., p. 163). Antrim, Armagh, Derry, Donegal, Down and Fermanagh had then a Protestant majority. This one can hardly credit for Donegal and Fermanagh.

At the present day if we take religion as the distinctive test we should estimate the Irish element in the six counties at 60 per cent.

In reality, however, it is more. For, while few or none of the dominant race in the plantation counties are likely to have become Catholics, it is quite certain, as surnames show, that very many of the old Irish have in the course of centuries become Protestants.[30]

There is much confusion as to the extent of land actually affected. The official estimate was that in round numbers half a million acres were confiscated, and that 58,000 of these were distributed among about 280 Irish.[31] Now, since the true area of the six counties is 3,680,000 acres, writers such as Froude and O'Connor Morris have stated that only the best lands were taken, and that the remainder—largely wood and waste—was left to the Irish.[32]

This theory seems, however, to have no foundation in fact. In the first place particular pains were taken to remove the Irish from the hills and woods, and to settle them in the open country where they would be less dangerous to the State,

[30] Many Ulster Protestants bear distinctively southern names. This is accounted for by the custom of the Charter Schools of sending the children of southern Catholics to schools in Ulster, so that their parents might not be able to prevent their being brought up as Protestants. (*Irish Intermediate Education.* Dublin, 1877. p. 148).

[31] The numbers differ in the various lists. In 1641 about 270 Catholics held land in five of the six counties, there being no certain return for Armagh. Of these only five or six were in Derry.

[32] There is a grant 10th of Jas. I. to Captain John Sanford of mountains, woods and bogs in the six plantation counties, except such as heretofore been granted by the King by Letters Patent.

and where they might soon settle down to agriculture. Furthermore, in 1641 Protestants held over 3,000,000 acres and Catholics about 586,000 acres in the six counties.[33] The truth seems to be that the whole of the six counties were confiscated; that O'Neill of the Fews, Conor Roe Maguire, and one or two O'Neills in Tyrone got large grants, and that about 280 other Irish proprietors had between one-eighth and one-ninth of the rest divided among them. And the surveyors when they speak of acres took into account only what they considered good land, wood, waste, and rough pasture being thrown in; so that to obtain a true estimate of what each man obtained we must multiply the acreage actually given by seven.[34]

We must remember in estimating the effects of the Plantation of Ulster that some regard was paid to the rights of the Irish. Sir John Davies makes a point of this in his letter of 1610, contrasting the procedure of James not only with the precedent set by the Spaniards in their late expulsion of the Moriscoes, but also with that set by the Anglo-Normans at their first invasion. And it must be borne in mind that as regards the four counties directly affected by the Flight of the Earls there were many more Irish with a legal title to landed property in them after the Plantation than before it.

Rightly or wrongly the Crown in these counties had granted the clan lands to the chiefs. These

[33] These are Hardinge's figures; he gives the total area as 3,630,000 acres.

[34] Conor Roe Maguire is said to have got the whole barony of Magherastephena estimated at about 7,000 acres. It really has over 61,000 English acres.

latter, it was hoped, would in turn grant estates to the chief men under them. In time they might have done so, but there is clear proof that up to 1607 they had neglected or rather refused to do so. Even Neal Garve O'Donnell, when complaining that the promises made to him had not been kept, declared " that he acknowledged no other kind of right or interest in any man else, yea the very persons of the people he challenged to be his.[35] And at the time when O'Cahane seemed likely to obtain a decision in his favour against Hugh O'Neill, it was proposed that he should create freeholders under him, yet he had done nothing in the matter.

It is true that had the Earls been left undisturbed, they would probably have left all their subjects in enjoyment of whatever they were entitled to by Irish law, and would in time have granted to the chief among them estates held by English tenures. But in the course of a generation or two it is probable that greed would have been stronger than old custom.[36] The Scotch chiefs in the Highlands, taking advantage of royal grants, reduced all their clansmen to the condition of tenants at will. The Mac Donnells of Antrim, the Mac Carthys of Muskerry and other Irish chiefs to

[35] See Bagwell: *Ireland under the Stuarts;* but I cannot verify his reference.

[36] Both O'Donnell and O'Neill had on persuasion of the Deputy and Council named such persons as they thought proper to be freeholders in 1605 (*Calendar of State Papers*, 1605, p. 320, and following). In the case of Tyrone these could only be named for the Earl's life, as his son was still under age. However, the Earls appear to have taken no steps to carry out their promises. On the other hand, under the plantation scheme there was to be a complete clearance of the Irish from the lands granted to Undertakers. Although never thoroughly carried out, this project marks off the plantation of Ulster from all other plantation projects of the Stuart period.

whom grants of all the clan lands had been made seem to have followed the same course. There is no reason to suppose that O'Neill or O'Donnell would have been less grasping than Cameron of Lochiel, or the Mac Donalds of the Isles, or the Campbells of Argyll.

Yet, laying aside speculation as to what might have been, it is worth while to reflect on some of the consequences which flowed from the confiscation of Ulster. There was the misery of the expelled Irish, breeding a rancour made all the more bitter by the feeling that the King's word had been broken, and that the promises made in his name by his representatives had been ignored. From this bitterness came the rising of 1641 which in its turn brought with it more injustice giving rise to a train of evils the consequences of which have not yet worked themselves out.

And greatest sufferers by the results of the Plantation were the descendants of the King who was responsible for the scheme. When we read how the Duchess of Buckingham found O'Cahane's wife old and in rags crouching amid ruins over a scanty fire, there may rise before us at the same time the picture of James' daughter the "Winter Queen," a fugitive and a widow, begging her bread from half the courts of Europe, and of his daughter-in-law—daughter of France, widowed Queen of England—lying in her room in Paris unable to leave her bed, because she had neither clothes to wear nor fire at which to warm herself.

Their miseries, however, are only incidents in a great family tragedy, and in that tragedy a large if not a deciding part is played by Ulster.

Had there been no rising in Ulster of the native Irish in 1641, or had there been no English and Scotch puritan settlers in Ulster to oppose the pacification of 1643, Charles I. would have had at his back an Ireland united in his support in his struggle with his revolted English subjects. The contest with them was a close one. Can we doubt that with one kingdom solidly united in his favour he would have been able to beat down his opponents? That the Plantation of Ulster cost the son of James I. his head is a proposition which can be maintained, that it cost James' grandson and namesake his Crown is a proposition which hardly admits of dispute.

Before the walls of Derry, and not at the Boyne or at Aughrim, was the question decided that the house of Stuart was to vanish from the ranks of ruling houses, to see finally, after some brilliant episodes, its cause buried in a drunkard's grave. Nor can the rulers who have succeeded to the Stuart heritage feel sure that the consequences of this far back injustice have been exhausted yet. And a worse confiscation was to follow.

CHAPTER III

THE PLANTATION OF LEINSTER

To James I. and his advisers the new plantation in Ulster appeared a great success. They began to look around for further opportunities for confiscation and these were very soon found.

In the early days of his reign James had made no distinction between the old Irish and the old English. Grants were freely made to all the chief men of both races who took advantage of the Commission for the remedying of Defective Titles or of that for accepting surrenders and making regrants.[1]

But already in 1611 Sir John Davies, on the look out for means to increase the revenue of the Crown, had pointed out the weakness as regards a legal title to their lands of many of the old Irish in Limerick and North Tipperary, the O'Kennedys, O'Mulrians and others. They had expelled the old English families planted in their districts; the heirs of these were not known; hence the lands had come to the Crown by common escheat. Davies, however, did not advise confiscation and plantation. He merely suggested that the Irish might be called on to compound for their estates,

[1] See Sir John Davies: *Discovery.*

which would then be surveyed and regranted to them, no doubt for a substantial payment.[2]

There was, in fact, in the centre of the island, an almost unbroken stretch of territory, along the eastern bank of the Shannon from Leitrim to close to the city of Limerick, occupied by various old Irish clans of no very great individual strength. A large part of this district had formed part of the old kingdom of Meath, and so had formed part of De Lacy's lordship; other portions had been parts of the Leinster sub-kingdoms of Offaly and Ossory; others again were in Munster.[3]

Common to all this tract was that it had been granted to, and to a certain extent occupied by the early invaders; that the Irish clans had expelled the settlers in the 14th century[4]; that the chiefs had submitted to Henry VIII. and had thus been, at least, implicitly, recognised as subjects; that most of the chiefs had made surrenders to the Crown under Elizabeth and James, and had obtained, as they thought, a valid title to their lands; and, finally, that these surrenders and regrants had only affected the demesne lands and private

[2] *Car. Cal.*, 1611, p. 104.
Some of the chiefs of these districts already had obtained grants from the King of the demesne lands and rents and services attached to the chieftainship. Davies probably referred to the smaller landowners.

[3] The clans were O'Rourkes and their subject clans in Leitrim; O'Ferralls in Longford; O'Melaghlins and MacGeoghegans in West Meath; O'Shinnaghs or Foxes, O'Molloys, MacCoghlans and O'Carrolls in the modern King's County; O'Dunnes and MacGillapatricks in Queen's County; O'Kennedys, O'Meaghers, Mac I Briens, O'Mulrians, O'Dwyers in Tipperary.

[4] Friar Clyn under date 1346 tells us that Thadeus son of Roderic, princeps of Elycarwyl, *i.e.*, Ely O'Carroll, had slain, exiled and cast out from his lands of Ely those of the "nations" of Barry, Milleborne, De Bret and other English, and held and occupied their lands and castles.

property of the chiefs, without in any way conveying to them the estates of the free clansmen.[5]

The clansmen, moreover, had in most cases taken no steps to secure their rights against the Crown. Their rights as against the chiefs had been recognised, at least implicitly, and it had probably never occurred to them or to anyone else that the Crown would ever seek to deny them any title to what they held.[6]

Now they received a rude awakening. It was discovered that no length of occupation could give an Irishman any right to lands which had once been in English hands. None of the actual inhabitants, therefore, could have any rights to land unless they could show a grant from the former English owners, or—since the rights of these had largely fallen to the Crown—from the Crown.

The native inhabitants naturally enough protested against this theory. They pointed out that they had held their lands for at least two centuries, that they had been recognized as subjects and treated as landowners under Elizabeth and even under James himself, and that during the 16th century no Irish had been deprived of their lands on such grounds as were now put forward.

To this the answer was that the lands held by them had descended, in the case of the chieftaincies by Tanistry, and in the case of the

[5] The grant for example to O'Molloy is explicit as to this. *Carew MSS.* Vol. 625.

[6] See the lists of chief rents, and the dues of cattle, hogs, oats, reapers, ploughdays, mowers, &c. in grants such as those to O'Dunne and to Mac I Brien of Ara in *Cal. Pat. Rolls* James I. and to O'Molloy. *Carew MSS.*, Lambeth Vol. 625. Q. Elizabeth's grant to MacCoghlan granted to the chief all lands, &c. in his possession, and the "rest," *i.e.*, evidently the clansmen, were to have letters patent. *Car. MSS.*, Vol. 625.

clansmen by Gavelkind. In 1608 the Judges, after hearing arguments for and against, had decided that the law could not recognize descent by Tanistry, and two years before "it was resolved and determined by all the judges that the Irish custom of gavelkind was void and unreasonable in law. . . . And all the lands of these Irish countries were adjudged to descend according to the course of the common law."[7] The proviso was added that anyone who possessed and enjoyed any portion of land by the custom of gavelkind up to the commencement of the King's reign should not be disturbed in his possessions; but that afterwards all lands should be adjudged to descend according to the Common Law.[8]

Now the effect of these two decisions was practically to reduce all Irish claimants to land in virtue of the two customs condemned to the position of mere squatters.[9]

There remained the grants to the chiefs and to certain prominent members of the clans. Some of these could not be got over; but with others a means was found.

In some of the grants, based on a surrender by the chiefs, there was an express condition that the

[7] Quotation from the resolution of the Judges given in A. Ua Clerigh: *History of Ireland* to the coming of *Henry II.*, p. 237.

[8] As a matter of fact the Books of Survey and Distribution clearly show cases in Connaught of lands divided according to gavelkind as late as 1641.

[9] Vol. 625 of the *Lambeth MSS.* founds the King's "general title" to these districts on the two facts that the chieftainships went by tanistry, but that there was no estate of inheritance thereby by the common laws of the Realm, but only a temporary taking of the profits thereof; and that those who held land by gavelkind have no estates therein by the common laws of the Realm.

grant was to be void if a title for the Crown could be established by any other means.[10] And although the Act 12th of Elizabeth, empowering the Lord Deputy to accept the surrenders of the Irish chiefs and to regrant to them the lands thus surrendered, appears to have been framed so as to enable the Crown to give a valid grant to the *de facto* holders of the chieftainship, yet the decision of the judges in the "Case of Tanistry" was in effect that these surrenders and the consequent validity of the Elizabethan grants might be successfully challenged.[11]

Furthermore, there was frequently a pretext for challenging the legitimacy of the chiefs.

The Canon Law had multiplied impediments to marriage. The Irish chiefs had often taken advantage of this to obtain from the Papal authorities a dissolution of their marriages and liberty to contract new ones.[12] The government by

[10] So in Elizabeth's grant to O'Molloy there was a clause that the grant was to be void if Her Majesty had any other right to the land either by record, Act of Parliament or otherwise, other than by O'Molloy's surrender. *Car. MSS.*, Vol. 625.

[11] Le Case de Tanistry turned on the point as to whether a surrender by Conor of the Rock, Lord of the O'Callaghans by Tanistry, was valid in face of the fact that his predecessor in the lordship, who was the senior representative of the family, had under the Common Law made a settlement of his lands and lordship on his grandson and greatgrandson. This by Irish law he had of course no right to do. The Judges held that Conor had had no estate which he could surrender, hence the re-grant to him was void. I can find no instance in which this precedent was extended to other cases.

[12] For cases of doubtful marriages of the chiefs see those of the first Earl of Clanrickard, three of whose wives appeared before the Commissioners who were sent to decide who was heir to the Earldom; Sir Cormac MacTeig MacCarthy of Muskerry speaks of Ellen Barrett "whom he had used" as his wife. The marriages of the Barretts themselves were a source of litigation

sometimes upholding the validity of the Canonical impediments, and by sometimes refusing to recognize Papal dissolutions of marriage, could in many cases prove that the Elizabethan grantees had left no legitimate offspring.

Thus the lawyers found an ample scope for further proposed confiscations.

When the chief of Leitrim, Sir Teig O'Rourke, died in 1607 the legitimacy of his children was at once called in question, because it was alleged that their mother was really the wife of Sir Donnell O'Cahane.[13]

The first move in the new policy of confiscation under pretext of law was made not in the midlands, but in the northern portion of County Wexford. A large portion of this territory seems to have been left to the Irish at the first invasion.[14] In the fourteenth century the Irish of Leinster had elected as king a descendant of Donnell Kavanagh, illegitimate son of King Dermot MacMurrough,[15] and he and his posterity had expelled the settlers from most of Carlow, all north Wexford, and such parts of Wicklow as they had occupied.

On the death of Cahir "Mac Innycross," who had been chosen king in 1531 none of his kinsmen could be found willing to assume the dangerous royal

[13] *Cal. St. Paps.*, 1607, p. 196, and 1611, p. 16.

[14] Orpen: *Ireland under the Normans*, Vol. I., p. 390. But Ferns appears later as an important manor of the lordship of Wexford. Then the Crown held the castle until the Mac Murroughs took it towards the end of the 14th century. They held it until 1536. Hore. *Hist. of Wexford*, Vol. VI.

[15] Donnell MacArt Kavanagh: chosen King about 1327. *Journ. Kil. Arch. Soc.* Vol II. New Series, p. 75.

title[16]; and through family feuds and the encroachments of the English the power of the MacMurrough Kavanaghs was greatly diminished, and the various subordinate clans seem to have largely fallen away from their control.

In particular the inhabitants of the northern portion of Wexford had begun to adopt English ways, and several of the old English from the southern part of the county had acquired lands among them either by purchase or by force.

In 1609 the inhabitants of this district determined to take advantage of the Commission for Defective Titles, and to surrender their lands in order to have them regranted to them by the Crown. Leave was granted to make the surrenders, and the freeholders obtained three commissions to the King's escheator and others to enquire into their lands and to accept their surrenders. On two of these nothing was done. But on January 27, 1610,[17] the surrenders were accepted. The time, however, limited by proclamation for surrender being then past, action was suspended because of the discovery in the mean-

16 Hughes: *Fall of the Clan Kavanagh:* Jour. R. Hist. and Arch. Assoc. of Ireland 4th Ser. Vol. 2, p. 282. He gives the succession of the last kings of Leinster as follows:—Morogh Ballogh, died 1511; Art the Yellow, second cousin to Morogh's grandfather, 1511—18; Gerald, brother of Art, 1518—1522; Morrogh son of Gerald, 1522—1531. It is uncertain whose son Cahir Mac Innycross was, or when he died. His successor Muriertagh, son of Art the Yellow, was only styled "MacMurrough." He died in 1547. A distant cousin, Cahir MacArt, succeeded, and in 1550 publicly renounced the style of "MacMurrough" which was never afterwards resumed.

17 The report says 1609; this is probably old style, the year beginning on March 25th.

MAP III.

South-East Leinster in the 16th Century.
(Area of Wexford Plantation shaded).

time of the King's title till his pleasure should be known.[18]

The first reference in the State Papers to the King's title is in a letter from Chichester to Salisbury in June 1610, in which it is referred to as a "new discovery." In December of the same year he asked that the lands in question should not be granted to the natives or to any other suitor but to Sir Edward Fisher and Sir Laurence Esmonde according to a form sent by Fisher. It would appear that having now looked into the "new discovery" he had determined not to regrant to the natives, but to make a plantation, and that the grant thus asked for was merely of a temporary nature to enable him to proceed with the work.

The new title was briefly this. Art MacMurrough Kavanagh and his subject chiefs had agreed with Richard II. to give up their Leinster territories by a certain day, and to set out and conquer new homes for themselves in some other part of the island, of which the King was to give them estates of inheritance. Whether anyone ever believed that this preposterous agreement could be carried out seems open to doubt; besides it is not clear how Art and his chiefs could surrender lands of which they were only trustees for their clansmen.

However the King at once granted seven manors of the lands then held by Art and his subjects to Sir John Beaumont. His interest descended to

[18] The King's title was first spoken of during a trial between Sir R. Masterson and one of the Kavanaghs. This was before the orders for accepting surrenders were made. The Deputy had not heard of the King's title when the orders were made.

Francis Lord Lovel who rebelled against Henry VII., disappeared at the battle of Stoke, and was duly attainted. His lands thus came to the Crown. Queen Elizabeth afterwards granted the manor of Dipps to the Earl of Ormond (really Dipps seems to have been Kildare property) and that of Shilelagh to Sir H. Harrington; the remaining five, lying between the Slaney on the south, the Blackwater of Arklow on the north, the sea on the east, and the Counties of Kildare and Carlow on the west were still in the King's hands, and the actual occupiers were only intruders.[19]

The next step was that in May, 1611, the King authorized Chichester to accept surrenders, and mentions a plantation. It would appear that the

[19] This title is set out in the report of the Commission of 1613. *Cal. St. Paps.*, p. 439.

The seven manors were Fernegenall, O'Felmigh, Shelmalier, Lymalagoughe (or Kynelaghowe?), Shelelagh, Gory and Dipps. It is curious that we are not very certain as to why no such scheme was planned for parts of Carlow and Wicklow which had also been subject to Art MacMurrough.

Of the manors mentioned above we know that Fernegenall and O'Felimy lay along the sea, north of Wexford harbour. (Orpen. *Ireland under the Normans*, Vol. I., p. 390). Gory is all or part of the modern Barony of Gorey, Shelelagh is obviously Shilelagh now in Co. Wicklow, which seems to have been inhabited by O'Byrnes. There are two modern baronies of Shelmalier. Shelmalier east seems identical with Fernegenall: it is not clear how much if any of Shelmalier west was occupied by the Irish. The barony of Bantry was for the most part in Irish hands in the early days of Henry VIII.: some of it had since been seized by the Butlers and others, who had got grants of what they had conquered. It was not included in the area now in dispute. The "Duffry," between Enniscorthy and Mt. Leinster, also lay outside the area. The Statute of Absentees had vested Carlow and the feudal rights over English Wexford in the Crown.

Other names mentioned are Farrenhamon, Farren Neale, Clanhanrick, Kilcooleneleyer, Kilhobuck. (Bagwell: *Ireland under the Stuarts*, Vol. I., p. 154).

The boundaries were the Slaney, the sea, and the modern Co. Wicklow.

See also Hore. *History of Wexford.*

former surrenders were either unknown to him, or were considered to be of no effect. Accordingly Fisher, Esmonde and the King's Surveyor General visited Wexford, acquainted the natives with the King's intention to plant, proceeded to measure the country and persuaded fifty persons "of the best understanding and ability in the country and a few of the meaner rank" to make surrenders to the King without any manner of promise or assurance.

The report of Fisher and his colleagues is curious. They estimate the extent of the lands in question at 65,000 acres of profitable land, whereas the actual area of the Irish territories in Wexford is about 396,000 statute acres, or if we exclude the barony of Bantry, and that part of Scarawalsh west of the Slaney it is about 240,000 acres.[20]

They declare that two small territories totalling together 4,000 acres and called Roche's land and Synnott's land should not be interfered with, as the owners were old English, and claimed to have good titles, and in any case should not be disturbed. Two thousand acres belonged to the See of Ferns, and thirteen thousand had been recently granted to various persons by Letters Patent. There remained, then, 46,000 acres at the King's disposal. They considered that 24,000 acres were necessary to content the Irish and old English, but that few of the former should have lands, and, of those few, none of the Irish were to have more than 1,000 or less than 100 acres.

[20] The Irish parts of Wexford west of the Slaney were apparently held to be vested in the Crown by the Act of Absentees, and had been dealt with by Elizabeth, at least as regards the chief men.

Thus 22,000 acres, or one-third of the country were available for a plantation. In reality the loss to the Irish was much greater than a third. For first there were several of the old English who had by purchase or by grant obtained heavy chief rents on certain of the districts in question, and these were now to be commuted for grants of land, and Sir Richard Masterson had claims to a large extent of land, which claims were to be fully satisfied; and secondly very few Irish were to be provided for in distributing the 24,000 acres set apart for the old inhabitants.[21]

These proposals caused dismay among the natives. Fortunately they were able to secure the services of many of the old English equally threatened by the project, and in particular those of a lawyer named Walsh.

It was held to be necessary that the King's title should be found by a jury of the county. At the first trial the jury refused to find a verdict for the Crown. Then the case was tried again in the Exchequer with the same jury. Eleven were for the King; five were against him, and were duly sent to prison. The case was then sent back to Wexford, and the eleven compliant jurymen together with Sir Thomas Colclough, and John Murchoe, a patentee in the new plantation, found a title for the King based on the forfeiture of the Beaumont grant.

[21] The Report of the Commission of 1613 gives different figures. According to it nineteen Undertakers got 19,900 acres; Sir R. Masterson 10,000; fifty-six others of the old inhabitants got 25,000, leaving 12,000 acres available for "martial men," *i.e.* servitors.

While this trial was going on, or soon after, the inhabitants sent over to London (Dec. 1611) a petition by the hands of Walsh setting forth the injustice which they considered had been done to them. The facts set forth in it seem in the main correct, for they agree with the findings of a subsequent government commission of enquiry.[22] In particular they stated that when authority was given to receive their surrenders in February, 1609—10, Chichester himself had by Act of Council directed the Commissioners for Defective Titles to declare that they should have letters patent on their surrenders, the lands to be holden in free and common socage.

The Commissioners for Irish Causes after recital of the facts advised that the surrender of 1609 be accepted, and that regrants of all their lands should be made to the former holders, thus upsetting all plans for a plantation.[23]

Accordingly in January, 1612, the King wrote to Chichester, revoking his letter of May, 1611, and directing that there should be no plantation. Chichester protested to Salisbury against this decision and stayed all proceedings pending further directions.[24]

The King, influenced probably by Salisbury, changed his mind.[25] On the pretext that he had

[22] See the Report of the Commissioners sent over in 1613. Miss Hickson prints it in full.

[23] *Cal. St. Paps.*, 1611, pp. 175—177.

[24] Chichester to Salisbury. March 5th, 1612. *Cal. St. Paps.*, p. 252.

[25] King to Chichester. March 22nd, 1612. *Cal. St. Paps.*, p. 259.

been deceived by the agents for the natives, he revoked his letter of January and informed Chichester that he might proceed with a plantation, but that owing to abuses on the part of those formerly concerned in the business Chichester himself was personally to see to the carrying out of it.

In December of the same year the King had received and considered Chichester's project, and transmitted for his consideration a scheme of his own.[26]

Noteworthy points in this scheme are that not many natives were to be made freeholders; that it was to be considered whether all or most of the natives should hold only for a term of years; and that lands now planted were not to be passed or sold to the natives. Furthermore it was suggested that 20,000 acres were not enough for the new settlers.

Chichester fell in readily with all the royal suggestions. The work of evicting the former owners and putting in the new ones was proceeded with.[27] But the scandal was so notorious that an investigation into the whole business was ordered to be made by the Commissioners sent over in 1613 to enquire into Irish grievances.

The Report of the Commissioners gives a summary of the whole proceedings and some interesting statistics. They estimate the area at 66,800 acres, and say that the possessioners claim by descent after the custom of Irish gavelkind as

[26] December, 1612.
[27] May, 1613.

freeholders, and as freeholders they have been empanelled on juries since the King's time.[28]

The number of freeholders who had made a surrender of their lands was 440, but the inhabitants declared that the true number was 667. Fourteen of them had patents from the Crown. Of the claimants only fifty-seven had got any lands, and no one had got any who failed to make out a title to 100 acres, or in some rare cases 60 acres. The vast majority of the former owners were thus deprived of their lands. The total population left in the condition of mere tenants at will is said to amount to 14,500. It is not very clear whether this number includes the dispossessed owners and their families. If it does, allowing five persons to a family, we find that the landowning class in Wexford numbered a little over 3000 persons, out of a total population of about 15,000.[29] This is interesting as being almost the only information we have as to the proportion among the Irish of the free landowning classes to the semi-servile dependent population who had no claims to land.

[28] This report is very inaccurately summarised in *Cal. St. Paps.* It is printed from Harris' *Desiderata Curiosa Hibernica* in Miss Hickson's *Ireland in the Seventeenth Century.* It says that 35,210 acres had been allotted to fifty-seven of the former inhabitants. Of this about 10,000 to Sir R. Masterson.

Of the fifty-seven named, eight are said to be old patentees (one being a certain Richard Cromwell). Two other patentees are mentioned as having got no allowance under the scheme for the lands surrendered by them. The fifty-seven names include Sir Richard Masterson and about twenty-two "old English."

[29] If they are not included the total population would have been, roughly, about 18,000.

Furthermore the Commissioners found that the inhabitants complained of gross frauds in admeasurements.

The result of this Report was a new project, drawn up in London by the Lords of the Council, and transmitted to Ireland in August, 1614.[30]

This project completely upset all Chichester's proceedings. It first provided that all who claimed land, whether old English or Irish, and all patentees whether old or new, thus including such of the undertakers as had already got lands, were to surrender their holdings before Christmas, 1614.

Then a quarter of the lands in dispute, viz., 16,500 acres of arable and pasture lands besides barren mountain and boggy or unpasturable woods, were to be bestowed upon eleven of such new patentees as Chichester should choose: each getting 1,500 acres, "or such other fit natives as will accept the same if the said patentees refuse." The lands thus allotted to the undertakers were to be in the more inland and hilly parts, along the borders of the Irish countries of the Dufferin, Ferrenoneale, Shilelagh and the Lordship of Arklow; and those who actually held these 16,500 acres including "old pretended patentees" were to be competently satisfied by the rest of the inhabitants.

The remaining three-fourths of the country, comprising the parts along the sea and the more level inland parts, were to be repassed to such of the natives and former inhabitants as the Lord Deputy and his assistants shall deem fit to be free-

[30] *Cal. St. Paps.*, 1614, pp. 492—96.

holders; none of the freeholders to have less than twenty acres, and such as had formerly less to be made tenants to others either British or Irish. The portion set apart for the old inhabitants was however to provide lands to compensate Sir Richard Masterson and one of the Synnotts for chiefries arising out of some of the territories, and further to compensate Esmonde, Fisher and one Blundell for their labours over the plantation, besides providing an estate for "Brady the Queen's footman." Should the natives refuse to surrender, then the present patentees (*i.e.* the Undertakers and such of the old inhabitants as had obtained patents) were to be at liberty to stand on their patents, and the lands so refused to be surrendered were to be granted to others, of British birth, and then all parties were to be left to the law, but in the meantime the natives were to be continued in possession until evicted.

Chichester was much offended at the new project. We learn from Sir Oliver St. John in December, 1614, that Chichester was keeping entire control of the proceedings, although several persons had been named by the Council as his assistants.[31] And we also learn from the same source that "the inhabitants shun to surrender their estates."[32]

This was certainly bad policy on their part, especially as their agents, or some of them in England, had accepted the Council's project.

So in March, 1615, new directions came from London. Since the natives refused conformity

[31] *Cal. St. Paps.*, 1614, p. 531.
[32] *Ibid*, p. 540.

with the King's project, Chichester was to proceed as directed in such an eventuality, *i.e.*, to give the whole territory to Undertakers or old patentees; but all the natives were to be put back into possession of the lands already in the hands of the new patentees, until evicted by due course of law.

Chichester thereupon proceeded to distribute 23,300 acres among eighteen Undertakers, all Englishmen, and of course Protestants. To his nephew he gave 4000 acres, to his son-in-law 1000. To eight more Undertakers he was preparing to give 5,840 acres. But he forbore to carry out the full severity of the Council's order, as he thought that the London authorities would finally wish to give the old inhabitants some satisfaction, and so reserved 36,860 acres for them.[33]

He was right in his suppositions. The Council in England suddenly veered round again and, in December, 1615, sent Chichester letters of general restraint. They decided to adhere to the scheme of August, 1614, namely, to give three-quarters of the lands to the old proprietors and ordered that the new patentees should surrender their grants.[34]

Chichester of course protested against this in a letter to the Lord Carew, but he suggested that if his nephew Trevilian gave up his 4000 acres there would only remain 2,800 acres to be cut off from the Undertakers and that they " will undoubtedly

[33] *Car. Cal.*, February, 1616, p. 324.

[34] Apparently in the interval the old inhabitants, or some of them, had submitted.

Car. Cal., 1616, Chichester to the Lords of the Council, p. 332.

be gotten in a measurement"—a significant admission.[35]

By March of 1616 Chichester understood that most of the new patentees had surrendered; but, as late as December of the same year we find him writing to the Lord Carew protesting against giving only 16,500 acres to the Undertakers, and suggesting that twenty of them should get 25,300 acres, leaving almost two-thirds to the old inhabitants.[36] In the same month he wrote to the Lords of the Council giving a history of all his dealings in the matter.[37]

His first plan had been to assign 32,000 acres to the planters, and 34,000 to natives : among these he must have included some at least of the native patentees. Then he explains the subsequent course of the proceedings, evidently trying to justify himself against any charges of unfair dealing. It appears that by now the old inhabitants, or the chief of them, had submitted to the King's decision of 1614.

In the meantime there must have been a curious state of affairs in Wexford. As far as can be made out, although it was finally decided that only one-quarter of the territory was to be given to the Undertakers, only the fifty-seven old proprietors provided for under the scheme of 1611, and possibly the old patentees, had so far got any of the lands thus reserved from the planters.[38]

The old inhabitants, possibly owing to the

[35] *Car. Cal.*, 1616, p. 324.
[36] *Car. Cal.*, 1616, p. 330.
[37] *Car. Cal.*, 1616, p. 332.
[38] At least eight of the old patentees appear in the list of the fifty-seven old proprietors as printed by Miss Hickson.

admixture of old English amongst them, showed great pertinacity in pushing their complaints. Chichester on his side was equally pertinacious. The resources of a superior civilisation were called into play; and by false measurements one-half of the whole country was set apart for the Undertakers, instead of one-fourth.

But the Irish prevailed so far as to have the lands resurveyed by the King's surveyor general. In March, 1618, the fraud was discovered and room was found to give freehold estates to eighty more of the old inhabitants. Three-quarters of the territory, less the area set apart to satisfy the claims of the Queen's footman, Esmonde, Masterson, &c. was exactly distributed to the natives, making choice of the chief of every sept and others found by the general office to have been proprietors, freeholders of less than 80 or 100 acres not being included in the distribution as not good for themselves.[39]

In this way while 150 of the chief inhabitants obtained estates good in law, all the smaller landowners were deprived of everything. They numbered certainly 290, possibly over 500. Two hundred of them proceeded to Dublin to urge their claims in person. They even pleaded for consideration on the ground that their ancestors had first brought the English over! For answer they were thrown into prison, and the Deputy St. John proposed to transport some of them to the new colony of Virginia: a short and cheap method of dealing with Irish landlords which might commend itself to modern Chancellors of the Exchequer.

[39] *Cal. St. Paps.*, 1620, p. 303.

Complaints still continued. In 1632 Hadsor, an English official who spoke the Irish language, reported that individuals had been unfairly treated and stated that the Irish gentlemen appointed to distribute them helped themselves to the lands which they were to divide amongst others.[40]

I have dealt thus at length with the plantation of Wexford because in it we find all the features of the confiscations carried through under James I. They took place in a time of peace, without any pretext of rebellion; they discriminated against the native Irish, who had, if anything, been rather better treated than the old English under the Tudors; they were founded on old titles for the Crown, based on legal quibbles and raked up out of the obscurity of centuries; they struck at the root of the Tudor policy which had in the main recognized the occupier as the equitable owner of lands: they upset or at least rendered insecure all grants by Elizabeth, or even by James in his early years, based on surrenders by the occupier. And at the same time they show a real desire on the part of the authorities in London to deal fairly with the Irish, a desire frustrated as a rule by the greed and unscrupulous methods of the officials on the spot.

Above all they exasperated the natives far more than any confiscation based on conquest in war could have done. Had the plantations been fairly carried out, it is possible that the Irish would not greatly have resented them. The land available

[40] Hadsor to the King. *Cal. St. Paps.*, 1632, p. 681.

was large, the population scanty[41]; if some lands were taken from the Irish, yet, as compensation, the rest was legally secured to them, the uncertain exactions of the chiefs were done away with, peace was secured. But the capital mistake was made of absolutely suppressing the small landowner, a mistake apparently honestly founded on the doctrine that "the multitude of small freeholders beggars a country." The result was that while the more influential clansmen were discontented, the smaller men, deprived of their all, lost all confidence in the justice of the administration, a loss that has never up to now been made good.

The plantation of Longford shows most of the features mentioned above. The territory of the O'Ferralls, the ancient Annaly, the modern County Longford, had been for nearly a generation the subject of controversy. First, under Elizabeth, the two chiefs O'Ferrall Boy and O'Ferrall Bane, seem to have endeavoured to "grab" the lands of the clansmen. These efforts had been successfully resisted; and the clansmen were recognised as the owners of the lands not comprised in the demesnes of the chiefs.

Next the Baron of Delvin and his mother had got a grant to be satisfied out of any forfeited lands in Longford which might have come to the Crown during Tyrone's rebellion; and during the early days of James I. a violent controversy was

[41] Some of the Irish asserted that 100,000 people were affected by the plantation. This figure is quite impossible; the baronies in question had in 1901 about 45,000 inhabitants. The Commissioners apparently give the population as about 15,000. Even if it numbered 20,000 there was ample room for new settlers.

carried on as to what these grants amounted to.[42] There were also charges of chief rents and of beeves, originally payable to the Crown, but which had been granted the one to Sir Nicholas Malby, and the other to Sir Richard Shaen.[43] Against these, or at least against the way in which they were assessed, the inhabitants protested.

It is noteworthy that in these controversies both the King and Chichester showed themselves favourable to the O'Ferralls, and that there was no hint of any attempt to deprive them of their lands.[44]

A portion of the O'Ferralls had joined in Tyrone's rebellion, and had been attainted and outlawed—chiefly, said they, through Lord Delvin's procurement. Lord Delvin sought to obtain possession of their lands, by virtue of a grant to him by Elizabeth of forfeited lands value £100 a year.[45]

The O'Ferralls had submitted to the Crown under promise of pardon and remission of forfeiture; nevertheless the widow and son of Lord Delvin had obtained a warrant to pass to themselves nearly one-half of the County Longford. The King, however, ordered Delvin's patent to be can-

[42] *Cal. St. Paps.*, 1605, p. 312, gives the case for Ld. Delvin. It would appear that it was chiefly O'Ferrall Bane and his followers who were affected.

Cal. St. Paps., 1606, p. 536, and 1606, p. 45, also deal with this controversy.

[43] £200 a year to Malby; 120 beeves to Shaen. The latter is said to have been an Irishman of low origin. He claimed kinship with the O'Ferralls.

[44] King to Chichester. *Cal. St. Paps.*, 1607, p. 134: also Deputy and Council to the Privy Council. *Ibid*, p. 157.

[45] *Cal. Stat. Paps.*, 1607, p. 159. Statement of the proceedings in the case between Ld. D. and the O'Fs.

celled, and the O'Ferralls to be restored.[46] At first his idea was that the surviving O'Ferralls and the chief inhabitants should repossess what they had before the war, and that the lands of those who had died in rebellion should go to Lord Delvin.[47] But the latter got into trouble with the government,[48] and in 1608 Chichester proposed to get rid of his claims altogether, and to settle the O'Ferralls so that "all the inferiors of their septs may hold immediately of the King."[49]

Neither then, nor for some years afterwards, was there any mention of a plantation, but a settlement was delayed owing to the controversy with Shaen and Malby.

Apparently during this period it was discovered that a large part of the county was vested in the King, by virtue of the Act of Absentees, as having once belonged, at least in name, to the Earls of Shrewsbury.[50]

In May, 1611, the Lords of the Council gave explicit directions to grant all the lands in the county, after satisfying the claims of Shaen and Malby, to the ancient proprietors. Apparently

[46] By a letter of Jan., 1605—6: referred to but not given in *Cal. St. Paps.*, 1608, p. 522.

[47] King to Chichester. *Cal. St. Paps.*, 1607, p. 220: also same to same, 1608, p. 522.

[48] Amongst other things he was accused of having threatened to murder Salisbury.

[49] *Cal. St. Paps.*, March, 1608, p. 437, Chichester to Salisbury, and May, 1608, p. 522, the King to Chichester on behalf of the O'Ferralls.

[50] In Feb., 1610, or possibly 1611, *Cal. St. Paps.*, p. 581. Ld. Delvin states that it was by his travail and great charges that the King's title to Longford was first brought to light. In Oct., 1611, p. 148, we find the K's title through the Stat. of Absentees to the manor of Loughsewdie and other lands, making up a large part of the county, which anciently belonged to the Earls of Shrewsbury, mentioned as an obstacle to a final settlement.

even those whose feoffors or ancestors had been attainted or killed in rebellion were to be restored. A noteworthy point is the following direction: "Where small parcels are claimed by many through colour of gavelkind, the grant to be to the eldest and worthiest in each cartron, he being required to grant estates to others (if need be); yet they are to consider that the multitude of small freeholders beggars the country, whereof none to have less than one cartron."

Here there is a deliberate crushing out of the small landowners, who were to become leaseholders on the estates granted to the wealthier clansmen.

So far there had been no question of any confiscation or plantation. There is a gap in the records relating to Longford of four years, during which nothing seems to have been done towards securing the O'Ferralls in their lands. Then in 1615 came a letter from the King to Chichester, reversing all his former decisions. He finds "no remedy for the barbarous manners of the mere Irish which keeps out the knowledge of literature and of manual trades . . . . so ready and feasible as, by first, by settling a firm estate in perpetuity on such of the present inhabitants as have the best disposition to civility . . . . and, secondly, by intermixing among them some of the British. He is given to understand of some titles he has as well general as special to all or part of Longford, Leitrim and other Irish countries." Chichester was to inquire into these titles.[51] In other words, founding his right to Longford not on the surrender of the O'Ferralls

[51] *Cal. St. Paps.*, 1615, April, p. 35.

but on the Statute of Absentees, he directed that the inhabitants were to be treated as intruders, and a plantation was to be made on the lines of that of Wexford.

It is noteworthy that, in this very same year, the King wrote ordering Letters Patent to be made out for their estates for all the landowners in Clare and Connaught, as had been intended by the late Queen at the time of Perrot's Composition of Connaught in 1585.[52] Three years later St. John prepared a scheme for a settlement. He estimated that there were 50,000 acres of arable and good pasture land in the county, besides lands of patentees and unprofitable land.[53] Incidentally we learn that many of the natives had built good stone houses and that they were "reasonably reclaimed by civil education." As a matter of fact in the Carew MSS. Vol. 625 we find an account of Longford which goes far to show that the distribution of land by gavelkind was not the uncertain and scrambling distribution which Davies in some of his pleadings represented it to be : but that what distribution there was was confined within the limits of the inheritance of one family. In Longford, as in Wexford, Fermanagh and Leitrim every acre had its owner, and each individual clansman knew what acreage he was entitled to. It is noteworthy that some of the

[52] *Cal. St. Paps.*, July, 1615, p. 108.

[53] A survey given in *Car. Cal.*, 1618, p. 381, states that there were 57,803 acres of arable and pasture and 8,387 of profitable wood in the county, besides 23,959 (profitable, unprofitable) either granted by patents, or abbey lands, 25,843 acres of bog, 12,459 acres of unprofitable wood and bog, 1,710 acres unprofitable mountain, and 195 acres glebe lands, in all 130,356 acres. The true area is 269,000 statute acres.

estates were very small, and that they lay not altogether, but scattered in different townlands.[54]

Against this scheme of a plantation the O'Ferralls urged possession for centuries, the injustice of raking up an old forgotten title three hundred years old, the services to the Crown of some of them, their conformity to the laws, and above all the solemn promises of the late Queen and the present King, the Lord Deputy Devonshire, and the Lords of the Council.

But no attention was paid to their complaints, and a more or less voluntary submission was finally extracted from them. In theory three-quarters of the best part of the country was to be given over to the old inhabitants. But as usual, deductions were made from this to satisfy special favourites of the King or the Deputy, to redeem charges granted away by the Crown, to provide for forts and corporate towns. There were false admeasurements, the officials and the surveyors lived on the country during the survey and helped themselves to estates[55]; some of the old inhabitants by influence got more than their shares, others were deprived of what they were entitled to. The small landowners were swept away. Anyone who, after

[54] The Inquisitions in the printed Volume of Inquisitions "Lagenia" show a minute subdivision of land especially in Wicklow. We read of one man having one-sixty-fourth part of each of certain lands, another having one-seventh of one-sixteenth, another having one-seventh of one-fourth of some lands, one-seventh of one-sixteenth of others and one-seventh of one-sixth of others. These fractions are due to distribution by gavelkind. From the analogy of Wales it is possible to conclude that not the lands but the profits from them were really sub-divided, the lands being tilled or pastured in common.

[55] Such as Sir Christopher Nugent, H. Crofton, and Thomas Nugent of Collamber.

deduction of a fourth, saw his acreage reduced below 100 acres was liable to lose all : no one got less than 60 acres.

The dispossessed landowners were to obtain leases from the Undertakers, or from their more fortunate kinsmen. But none of the natives were to sell to any of the old Irish, or to give leases to them for more than forty years or three lives; provisions clearly against James' policy in his early days of making no distinction between the two races.

In the end 142 of the natives received estates. But amongst them we find about thirty names of old English extraction, men like the Earl of Westmeath who received the largest grant, the Earl of Kildare and several Nugents and Fitzgeralds.

Finally " it fell out so that divers of the poor natives or former freeholders of that county, after the loss of all their possessions or inheritance there, some ran mad, and others died instantly for very grief, as one James Mac William O'Farrell of Clangrad, and Donagh Mac Gerrot O'Farrell of Cuillagh, and others whose names for brevity I leave out, who on their death-beds were in such a taking that they by earnest persuasions caused some of their family and friends to bring them out of their said beds to have abroad the last sight of the hills and fields they lost in the same plantations, every one of them dying instantly after."[56]

At the same time as the plantation of Longford a similar project had been set on foot for the territory of Ely O'Carroll, and for Leitrim, and

[56] Memorial from the inhabitants of Longford. Hickson: *Ireland in the Seventeenth Century*, p. 283, Vol. II.

a general inquiry was made into the King's title to lands in Westmeath, King's County, and Queen's County.

Already in 1611 Chichester had informed the Privy Council that Ely appeared to be now of right part of His Majesty's inheritance.

The grounds on which this title was based, as given in Vol. 625 of the Carew MSS. at Lambeth, are curious.

Sir Teig O'Carroll had held Ely by Irish custom, and without any title good by the laws of the realm, until mindful of his duty to his Sovereign he had made a surrender of all that he was in possession of to Edward VI. who thereupon made him a regrant of what he had surrendered.[57]

This was evidently, from the context, a surrender and regrant of the lands, castles and duties attached to the chieftainship, and not of the clan lands as a whole, although this is not explicitly stated in the abstract of title.

Sir Teig died without heirs male, and the lands reverted to the Crown. His base brother, Sir William, succeeded as O'Carroll. He too made a surrender, and obtained a regrant.[58]

He made a settlement of his property, and enfeoffed certain persons for this purpose. His lawful sons, named in the settlement, apparently predeceased him; for the MS. says that he left only one lawful child, a daughter named Johan, who was married to Redmund Burke.

When Sir William died his base son Sir Charles succeeded as O'Carroll. The feoffees of Sir Wil-

[57] *Cal. St. Paps.*, Oct. 1611, p. 148.
[58] 20th Eliz.

liam's settlement released to him all their rights; and so did his sister Johan, after her husband had died in rebellion.

Sir Charles died in 1600 leaving no lawful issue; but he had at least one son, a minor.[59]

Apparently then the lands, castles and duties attached to the lordship had reverted to the Crown. As to the rest of the inhabitants their claims were apparently set aside on the pretext that they held no estates known to the Common Law; although up to the time of the plantation they had been treated as freeholders in various dealings with the government.

Ely had 93⅔ plough lands, each of 200 acres.[60]

Of these the Lord had had 37 in demesne, and a chief rent out of the rest of the country amounting to £70 11*s.* 7*d.* Under the plantation scheme young O'Carroll was to have ten plough lands; fifty other natives were to have forty plough lands divided between them; certain lands were set apart for forts, glebes, &c. Seven plough lands were already held by letters patent, and the residue —thirty plough lands—was to be divided among British servitors and undertakers.

The actual area taken from the clansmen here was not very great, since most of the lands set aside for the British settlers could have come from

[59] *Cal. St. Paps.*, July, 1613, p. 386, Viscount Butler, guardian of John O'Carroll, to have liberty to surrender and get a regrant of his estate.

Cal. St. Paps., 1612, p. 278, asserts that it had been found by office that the country of Ely with divers seignories and castles had descended to John on the decease of Sir William and Sir Charles.

It was asserted that John's mother was already married when she married Sir Charles.

[60] The real area of Ely is 102,900 statute acres.

the demesne lands. But in practice the real hardship must have been that the smaller landowners lost everything.

As for Leitrim it had for some time attracted the attention of the government. In 1607 Sir Teig O'Rourke, Lord of Leitrim,[61] had died and the attention of the government had been called to a doubt as to the legitimacy of his children, for it was alleged that his wife had been previously married to Sir Donnell O'Cahane.[62]

Leitrim had been included in Perrott's settlement of Connaught in 1585. But it did not form part of the De Burgo Lordship of Connaught. It happened that at the time of the Anglo-Norman invasion Tiernan O'Rourke, King of Breffny, was also in possession of Meath, and by a curious reversal of the real state of affairs, the grant to De Lacy of Meath was held to include Breffny.[63] No permanent settlements had ever been effected in either Cavan or Leitrim. But in 1607 Richard Plunkett of Rathmore claimed Breffny O'Reilly in virtue of his descent from Margery, third daughter and co-heiress of Sir Thomas de Verdon, who on her father's death had received Breffny O'Reilly as her share of his lands.[64] And Lord Gormanston and a certain Mr. J. Rochford

[61] *Cal. St. Paps.*, 1603, p. 84. By the execution of Sir Brian O'Rourke Leitrim had come to the Crown. A grant is to be made to Teig O'R., only legitimate son of Sir B., and to the heirs of his body of whatever had lawfully belonged to his father.

From *Cal. St. Paps.*, 1591—2, p. 467, it appears that it was recognised that only the demesne lands had come to the Crown.

[62] *Cal. St. Paps.*, 1607, p. 196, and *Ibid*, 1611, p. 16.

[63] Knox: *History of Mayo*, p. 314.

[64] *Cal. St. Paps.*, 1609, p. 221. Breffny O'Reilly corresponded to Co. Cavan; Breffny O'Rourke to Leitrim: both together made up "the rough third of Connaught."

claimed Breffny O'Rourke, or most of it, in virtue of their descent from one Nangle to whom that territory had been granted by an early lord of Meath.[65]

Hence the O'Rourke title under the Composition of Connaught was not very secure. By the execution at Tyburn of Brian O'Rourke for having aided the ship-wrecked Spaniards of the Armada, the lands attached to the chieftainship had come to the Crown. But, as Bingham had pointed out to Burghley, his attainder had not affected the rights of the clansmen, for as to the rest of the country "every acre of land is properly ownered by one or other." But the clansmen themselves were not secure. Many had been in rebellion; others had not fulfilled the conditions of the Composition.

In 1611 Chichester had noted that Leitrim was never well sub-divided, nor disposed to free-holders, but was left for the most part to the power and greatness of the chief of the O'Rourkes.[66]

So now, in 1615, designs were formed to remedy this by a resettlement of the country, involving a partial confiscation. The inhabitants seem to have made but little opposition. Young Brian, Sir Teig's son, and reputed heir, was the King's ward; but this was no protection to him. The Gormanston claims were found very useful in order to defeat the title of the O'Rourkes; but as against the King they were strongly resisted; and

[65] *Cal. St. Paps.*, 1592, p. 590, and 1621, p. 334. The Earls of Kildare claimed the northern portion. *Cal. St. Paps.*, 1591, p. 406.

[66] *Cal. St. Paps.*, 1611, p. 16.

were finally bought off by a grant of lands contingent on the death of the late chief's widow.[67]

Some two hundred freeholders surrendered their lands. One-half of the country was divided among them; but here, as in other plantations, we must suppose that the smaller landowners lost everything.[68]

The work of confiscation went merrily on. That Mac Gillapatrick of Upper Ossory had received a grant of his lands from Henry VIII. with the title of baron; that his son had been "bedfellow" of Edward VI.; that the family since then had preserved among all temptations its loyalty to the Crown did not prevent the seizure of one-fourth of the territory, which was granted to the Duke of Buckingham.[69]

Sir John Mac Coghlan of Delvin had served the late Queen well in her wars; his estates seemed secure by a grant from her, and at the same time she had directed that the rest of the inhabitants of Delvin were to have letters patent, every man of his own; chief and clansmen in O'Molloy's country seemed equally secure; O'Dunne of Iregan had received from James himself a grant setting out fully all the rents and services which he was to receive from the clansmen in lieu of the old uncer-

[67] *Cal. St. Paps.*, 1621, p. 334. It cannot be maintained against the King because they have been expulsed by the Irish 260 years, and the land recovered from them at the charge of the Crown.

[68] The chief had had 166 quarters, and a yearly sum of £276 13s. 4d. out of 445 quarters held by the free tenants, in lieu of the former Irish exactions. *Pat. Rolls*, Jas. I., p. 9.

[69] The title was derived from Isabel Marshall who married Gilbert de Clare, through their son Richard, whose son, another Gilbert, had one son who died without offspring and three daughters and coheiresses, one of whom, Elizabeth, married William de Burgo. Then through the Mortimers it, with the rest of the de Burgo inheritance, came to the Crown. (*Inquis. Lagoniae*).

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MAP IV.

To illustrate the Plantation of Leinster.

tain cuttings and spendings, thus seeming implicitly to recognize their rights to property. But now everything was re-opened and a proportion of each district was set aside for a plantation.

Yet even here we find that curious inconsistency in wrong-doing which marks all James' dealings with the Irish. He or his advisers did not press the claims of the Crown to O'Melaghlin's territory of Clancolman, or to Mac Geoghegan's territory of Moycashel. Here much of the land was held by letters patent, and most of the rest, though formerly held by gavelkind, was now disposed of by conveyance, purchase, &c. according to the course of the Common Law. The King's title was doubtful, and the inhabitants were well disposed to civility; therefore it was recommended that there should be no plantation; but that the whole of the lands should be granted by letters patent to the inhabitants.[70]

The curious can find in Vol. 625 of the Carew MSS. at Lambeth summaries of the proceedings with regard to finding the King's titles in these districts, with most interesting details, the dues payable to the chiefs, the methods of estimating the areas, and other information which makes it very regrettable that, as far as I know, none of the contents of the volume have ever been calendared.[71]

[70] *Lambeth MSS.*, Vol. 625.

[71] In Fox's country of Kilcoursey thirty natives besides some previous patentees were to have lands. There was no plantation. In Delvin sixty natives were to get estates, the same number in Fercal.

In Iregan the chief was to have about three-eighths; thirty of the clansmen three-eighths, and the remaining one-quarter was to be given to British planters, to the Church, and to a corporate town. The area of Iregan is 53,000 stat. acres.

There is one point in which the Leinster plantations differed very materially from that in Ulster. The mass of the Irish inhabitants were not expelled to make room for tenants of British extraction. It is true that the Undertakers were all Protestants, and almost exclusively British, and that they were bound to settle a certain number of British families on their lands. But they were allowed to have Irish tenants on the residue. To these, or at least to as many of them as had before been landowners, they should have given leases. But in most cases neither of these conditions was fulfilled. Very few British families were established—even the Undertakers themselves often were absentees—and the Irish seldom obtained leases, very largely it seems because they themselves preferred yearly tenancies.

Another point to be noticed is that the Irish landowners in these districts were forbidden to sell or give leases for more than forty years to any Irish—it is not clear whether old English were included in this prohibition.

The results of James' policy were that some years before his death the lands forming the present County Wicklow were almost the only Leinster districts in possession of the old Irish in which there had been no definite scheme of confiscation and plantation.[72]

[72] *Cal. St. Paps.*, May, 1623, p. 409, Ranelagh, Imale, Glencap, Cosha, part of Birnes', Shilelagh and Duffry not yet settled. Duffry was in Co. Wexford. Imale belonged to the O'Tooles. These also claimed Glencap, but the government held that it belonged to freeholders, dependent directly on the Crown. Cosha was between Aughrim and Tinahely, in Wicklow.

It was of course considered "dangerous" that close to Dublin the fertile valleys and bleak moorlands of Wicklow should still remain to a great extent in Irish hands. Proposals were made to start a fresh plantation there. But the designs of Falkland, the Lord Deputy, found an unexpected check in this. The Commissioners for Irish Causes wrote to the Privy Council advising against any further plantations.[73] Those already undertaken had not yet been properly completed; they were causing general exasperation; they had been much practised by the private aims of many particular persons; every Irish landowner was beginning to feel that his turn might come next.[74] Falkland wrote protesting violently against these views. But James followed the advice of the Commissioners and for the moment a stop was put to confiscation.

Yet the Irish were not left unmolested. Falkland persisted in his designs on at least part of Wicklow. His dealings with Phelim O'Byrne, son of the famous Pheagh Mac Hugh, are some of the most discreditable transactions in the history of Irish officialdom. They are set forth at length in Carte's Ormond, and are dealt with both by Miss Hickson and Mr. Bagwell. As however they did not result in any sweeping confiscation and plantation they need not detain us here.[75]

[73] *Cal. St. Paps.*, 1623, p. 427.

[74] *Cal. St. Paps.*, 1621, p. 306, for the fears of the "holders of land within the English Pale."

[75] Much of Wicklow passed however at this time into English hands, partly as having been the property of freeholders who had died in rebellion in Elizabeth's reign, partly by the attainder of some of the chiefs in her time, partly as being of old the property of the Crown. The barony of Shilelagh seems to be an example of the latter case. Part of Phelim O'Byrne's lands were seized, and later on passed into the hands of Strafford.

Incidentally we may remark, as illustrating the confusion as to rights of property, that three distinct claims were set up, namely, that the district in dispute, the lands of Ranelagh and Cosha—the modern Glenmalure and the country around Aughrim and Tinahely—(*a*) belonged to Phelim Mac Pheagh O'Byrne, (*b*) belonged to the freeholders, *i.e.*, the O'Byrne clansmen, (*c*) belonged to the King.[76]

However, projects for the plantation of that part of Wicklow known as Crioch Brannach or Byrnes' Country were put forward from time to time.[77] Lord Carlisle was one of the movers in

[76] The whole controversy, first as between Phelim and the freeholders, secondly between both parties and the King, can be followed out in the *Cal. of St. Paps.* The lands claimed by Phelim, *i.e.*, the territories of that branch of the O'Byrnes called the Gavel Rannell, must be carefully distinguished from the rest of the clan territory, the coast district from Delgany to near Arklow alluded to in the Calendars as "Byrnes' Country," in Irish Crioch Brannach.

Points to be noted are: that Phelim undoubtedly tried to seize the clan lands, and asserted that he had four times obtained letters from James and twice from Charles to that effect; that he and his sons ultimately retained possession of part of the lands, although various planters, notably a Scotchman named Graeme got some: that the lands of "Byrnes' country" were held to be the property of the freeholders and that much of this district was granted to Parsons and others since many of the freeholders had perished in rebellion under Elizabeth; and that there are repeated instructions in the State Papers to pass the rest to the freeholders.

Cal. Pat. Rolls, Jas. I. has on page 90 a grant of certain lands to Phelim, and of a rent of £100 old money of England out of the territory of Ranelagh and Pubble Kilcamman, which rent is payable by the free tenants and ter tenants in money or cattle.

[77] *Cal. St. Paps.*, 1628, pp. 330, 380, 395; 1631, p. 604. Also in vol. 1647—60; Addenda, 1625—60, p. 338. The *Cal. of Pat. Rolls* Jas. I. has on p. 465 a surrender of lands in Byrnes' country by about 140 natives, besides some Palesmen and English. (17th James). *Ibid.* p. 521 (19th James) there is a grant to Sir L. Esmond of lands both in Byrnes' country and in Cosha; but he is to regrant to the free tenants according to the proportions directed by the inquisition taken in the Co. Wicklow.

the matter, and in 1631 obtained a grant of all the King's rights in the district. He had, however, to promise to settle the freeholders at a moderate rent and on just terms. But nothing seems to have come of this. In 1628 directions had been given that the freeholders were to surrender and have their lands back; and a letter from Lord Esmond to Lord Dorchester in 1631 says that by the former's means the Byrnes had passed their lands.[78]

In 1634 we have a draft from the King regarding a plantation. In this it is said that King James in 1611 had signified his pleasure that surrenders should be accepted and regrants made to the freeholders; but that the revenue secured had been too small. "We believed at the time" (possibly in 1628) "that the persons settled had good estates to surrender to us, whereas it now appears by report from the Irish Council that the property should belong to the Crown."[79]

Directions were given for a plantation. "Persons who hold by our former letters shall not be displaced when the Commission (to find the King's title) reports; but shall submit to our title and receive a portion of their lands, at the rent which you may think fit." The rest was to be divided among fitting persons, which probably means English Protestants. The Earl of Carlisle and others who had got letters patent were to be dealt with to surrender their lands.

It was probably in pursuance of this scheme that in April, 1638, an Inquisition was taken and

[78] *Cal. St. Paps.*, 1631, p. 627.
[79] *Cal. St. Paps.*, 1634, p. 52.

a return made finding the King's title to Byrnes' country, that is, to the whole barony of Newcastle and parts of the baronies of Arklow and Ballinacor. It gives as boundaries the sea on the east, Killincargie and Delgnie and Glancapp on the north, Fartir, Sangheine, Imaal and Clonmore in Co. Carlow on the west, and on the south Shilelagh, Co. Wexford, and " the shires of Arklow."[80]

Thus both Ranelagh and Cosha were included in the area dealt with. The jurors found that Richard II. was seized of these territories, and so they had come to the King. This finding of course invalidated all previous grants, either to Englishmen based on the attainder and forfeiture of the freeholders, or to such of the freeholders themselves as had survived and had surrendered their lands and obtained regrants of them either under James or Charles. The lands thus declared to be in the King's hands were in or about 1640 vested in trustees who were to make grants to the Protestants of the lands of which they were possessed, no doubt on payment of certain fines.[81] The Irish freeholders were probably to be treated as in other plantations, *i.e.*, they were to lose one-fourth or one-third of their lands, and receive good titles for the rest.

[80] *Inquisitions Lageniae:* Killinccargie and Delgnie are the modern Killincarrick and Delgany. Glancapp corresponded more or less to the parish of Kilmacanogue. Sangheine (Salvum Kevini) was the Church land round Glendalough, called St. Kevin's Land in the Down Survey. The " five shires" of Arklow apparently took in the parish of Kilbride north of the Avoca river, and as much of the present Barony of Arklow as lies south of that river. This district belonged to the Ormonds.

[81] Reference in Ld. Powerscourt's book on Powerscourt to a Patent of Charles II. reciting this. Also *Cal. St. Paps.*, 1640, p. 238.

The outbreak of 1641 probably prevented any effectual steps for a plantation here. According to the Down Survey about forty-three Catholics had land in Byrnes' country in 1641.

Summing up James' dealings with Irish land we find that in the six plantation counties of Ulster there had been an absolute confiscation, about one-seventh of the total area being restored to certain chief men of the Irish. In Leinster, the whole of Longford, the north-eastern portion of Wexford, the baronies of Brawny, Clonlonan and Moycashel in Westmeath, about two-thirds of King's County and one-third of Queen's County had been declared to be the property of the Crown. But here the rights of the inhabitants were to some extent recognized. In theory they were to retain three-quarters of their lands.[82] In reality, owing to sharp practices on the part of the officials, they did not retain anything like this amount, and furthermore all the smaller landowners were deliberately deprived of their property "as not good for themselves." Finally in Connaught County Leitrim had been treated in the same way as the Leinster counties.

In Ulster the plantation was accompanied by the wholesale eviction of the Irish from the greater part of the lands settled. They were only allowed to dwell in certain specified lands, viz., those granted to the Bishops, the servitors and the old Irish. In Leitrim and in Leinster there was no such removal of the old inhabitants.

[82] And in a few districts there was no actual plantation or confiscation, *i.e.*, in Clancolman, Moycashel and Kilcoursey, the King's title being doubtful.

As to the rest of the island the policy followed by James had been in the main an equitable one. To most of the Anglo-Irish lords and to many of the chief men of the old Irish he had given tenures good in law; and he had taken steps to secure in their lands the innumerable landholders in Connaught and in Clare.

CHAPTER IV

THE CONFISCATION OF CONNAUGHT AND ORMOND

THERE remained of purely Irish territories untouched by confiscation or English settlement the province of Connaught less the County of Leitrim, Clare and the districts east of the Shannon in Tipperary and Limerick which had formed down to the time of Henry VIII. part of the Kingdom of Thomond, the MacCarthy lands in west Cork and south Kerry, Monaghan and some districts in Down and Antrim, and some small parts of Leinster.[1] From time to time we hear of the possibility of further plantations in these districts; but it was left to the energetic Strafford to take any effective steps in this direction.

The main facts of Strafford's confiscation of Connaught, and of his abortive scheme for a plantation are well known.[2]

In 1228, Henry III., after the death of Aedh King of Connaught, had treated that province as

[1] The majority of the landowners in Mayo, as well as those in about half of Galway were of course really of old English descent; but they had practically all become to all intents and purposes identical with the old Irish.

Monaghan had been divided amongst the clansmen first under Elizabeth and again under James. The barony of Farney was in possession of the Earl of Essex.

[2] It is noticeable that the Calendars of State Papers have very few references to Strafford's proceedings with regard to Connaught. Mr. Bagwell gives a pretty full account.

forfeited to the Crown, and had granted twenty-five cantreds to Richard De Burgo, retaining five in his own hands.[3]

These five, comprising most of the modern Roscommon, with parts of Sligo and Galway, after a complicated series of grants and regrants to some of the O'Conors and to various colonists, finally were left in the effective occupation of three great Irish clans, the MacDermotts, the O'Conors and the O'Kellys, who held them in defiance of any efforts of the Crown to subdue them.[4]

The remaining twenty-five passed, with the rest of the great De Burgo inheritance, to the Mortimers, and so ultimately, on the accession of Edward IV., to the Crown.

But with the extinction of the De Burgo earldom the Irish recovered possession of many districts, including the whole of the present County Sligo. Two illegitimate offshoots of the De Burgo house divided between them the lordship of the lands making up the present Galway and Mayo, and held their territories without any regard to the Mortimers. They gradually adopted Irish ways; so did the innumerable junior branches of the De Burgo family, and the descendants of the lesser lords, D'Exeters, Prendergasts, Nangles, &c. who had settled in Connaught in the thirteenth century. In particular succession to their lands began to be by tanistry in the case of the

[3] Knox: *History of Mayo*, p. 55. The dealings of the Kings of England with Connaught previous to this year are most confusing; a full account of them can be found in Knox.

[4] The best account of these transactions is in Knox, *History of Mayo*. Leitrim and Cavan were not included in the De Burgo grant as they were held to form part of De Lacy's grant of Meath.

leading men; and the lesser landowners divided up their lands among all their sons, approximating to, if not actually adopting the Irish practice of gavelkind. The Earls of Ormond and the Earls of Kildare still maintained shadowy claims to great tracts from which all the settlers had been expelled by the Irish.

Thus in the time of Henry VIII. the right of the Crown to Connaught was legally beyond a doubt. No Connaught landowner could have a valid title unless he could show a grant from the Mortimers or the De Burgos, and unless the descent to him had been in accordance with the Common Law.[5] There can have been but few landowners in Connaught who fulfilled both these conditions.[6]

Henry VIII. entered into indentures with most of the Connaught lords of both races, the effect of which was to receive them as subjects, and, at least implicitly, to recognize their claims to land. To the Upper MacWilliam Burke, or De Burgo, he gave the title of Earl of Clanrickard, and a grant in general terms, under which the new earl claimed only the demesne lands actually in his possession, and rents and services from the lesser chiefs and freeholders in the territory subject to him.[7] O'Shaughnessy, lord of a small district

[5] An Act, 10th of Hy. VII., had declared that it should be lawful for the King to enter into all manors, &c. of the lordship of Connaught in cases where no discharge of the King's interest could be proved. Several reputed freeholders were at the same time got rid of, after confessing that they had no right to their lands. Lds. Justices and Council to Vane. *Cal. St. Paps.*, 1641, p. 275.

[6] The head of the Blake family was able to do so. See *Blake Family Records.*

[7] For grant to E. of Clanrickard see *Cal. St. Paps.*, 1606, p. 210

round Gort, also obtained a grant which in his case was interpreted as conveying to him the lands of his clan.[8]

Sir Henry Sidney when Deputy about 1570 induced most of the Connaught lords to surrender their lands with the object of obtaining regrants with a clear title by letters patent. Nothing, however, was done for some years until, in 1585, under Sir John Perrot, a commission was sent down which made a settlement known as the Composition of Connaught.

The object aimed at was threefold. First a fixed revenue was to be secured to the Crown. Secondly the uncertain extortions, the "cuttings and spendings" of the chiefs were to be done away with, and the chiefs were to be compensated by grants to them and to their heirs by English law of the castles, lands and fixed rents and services which had hitherto descended according to Tanistry. Finally every landowner, chief or clansman was to be given a legal title to his own.[9]

This was a perfectly fair and square transaction. The inhabitants admitted that as against the Crown they had no legal title, the Crown admitted that equitably the inhabitants should have such legal title, and promised to grant it. The Crown title was not based on any surrender by the chiefs but on known facts; there appeared to be no loophole by which another title could be found

[8] The Books of Survey and Distribution show that in 1641 the then O'Shaughnessy owned the whole clan territory.

[9] It is curious to find how completely some recent authors of pronounced pro-Irish tendencies have failed to grasp the real meaning and effect of the Composition of Connaught. Even D'Alton appears to miss the point that the clansmen were to be secured in their shares of the clan lands.

for the Crown enabling it to tear up the Composition.

The Lords Justices and Council in 1641 maintained that the Composition was only an arrangement as regards revenue, and that it was never intended to give legal titles to the landowners.[10] But this is contradicted plainly by the wording of the various indentures, and the intentions of the government are set out in a letter from Walsingham with reference to MacWilliam of Mayo —" to give each chief his own, with a *salvo jure* to all others that have right."[11]

Indentures were made with the chief lords and gentlemen of each territory, which arranged the main outlines of the settlement, what the Queen was to have, and what each lord was to get in compensation for his cuttings, spendings, and uncertain customary duties. Inquisitions were to be taken before juries of the inhabitants to ascertain what each landholder was entitled to, and then letters patent were to be made out, giving to each man what was his own.

The troublous times which followed prevented the proper carrying out of this settlement. Valid grants were not made out by the Crown, and the inhabitants often failed to fulfill the conditions of the composition. The province was greatly involved in the rising under O'Neill and O'Donnell; but all treasons and rebellions were completely wiped out by James I. on his accession.

Thirty years after the Composition, and twelve years after his accession, in July, 1615, James wrote

[10] *Cal. St. Paps.*, 1641, p. 275.
[11] Quoted in *Iar Connaught*, p. 107.

directing that letters patent should be made out to every freeholder in Connaught and Clare as was intended at the making of the Composition in Elizabeth's reign. Accordingly we find in the Calendar of Patent Rolls James I. long lists of grants to Connaught owners.[12] In some instances, no doubt to save expense, the lesser proprietors joined together, and empowered one of the leading men to take out letters patent to their estates in trust for them.[13] The result was the creation in Connaught, alongside of the great estates of the chief men, of what was in many cases a virtual peasant proprietary.[14]

The Lords Justices in 1641, still bent on opposing the "graces," and clinging with narrow fanaticism to the idea of a plantation in Connaught, endeavoured to gloss over the meaning of James' order. They declared first that Perrot's Composition was merely a composition in lieu of cess with the Crown, and was not any engagement upon the Crown for any interest in their lands in respect of the composition, and secondly as to King James' letter of 1615 they do not think the demand of the Connaught landowners just, as the composition was not really a grant of lands—

[12] From p. 330 on.

[13] *Pat. Rolls*, James I., p. 348. Here about eighty proprietors in Connemara empowered Morrogh na Moire O'Flaherty to procure grants to himself of lands lately surrendered by them which were found by inquisition to be their property.

[14] *Cal. St. Paps.*, Ap. 1631, p. 606. Sir J. Jephson to Lord Dorchester. "The Counties of Mayo, Sligo, and Roscommon, which it is proposed to plant, are covered with thousands of families owning from £5 to £12 yearly value."
See also Books of Survey and Distribution.

thus begging the whole question.[15] It is quite evident from the documents themselves that the Composition of 1585 and James' letter of 1615 plainly intended to give legal titles to all concerned.

To make the grants valid it was necessary to have the surrenders and grants enrolled in the Court of Chancery. From the list of grievances sent in, in 1624, by the landholders of the Pale we learn that the province of Connaught, after excessive charge for passing their lands, cannot now have their surrenders enrolled, and for want of the enrolment of the surrender they threaten to overthrow the whole ground, and thus defeat the inhabitants of the benefit of His Majesty's gracious intent. To this it was answered:—It is by default of the parties in neglecting the enrolment of their surrenders; and therefore it now rests wholly with His Majesty to give warrant for new letters patent.[16]

Among the "graces" asked for in May, 1628, number (29) is "that the inhabitants of Connaught, Thomond and Clare forthwith have their surrenders enrolled in the most beneficial manner possible, and that the passing of patents be carried through on terms favourable to the tenants."

To this the answer of the Lords' Committee appointed to investigate and report on the concessions asked for was "The tenants of Connaught, Thomond and Clare should have their surrenders enrolled in the Chancery, according to the wish of

[15] The Connaught landowners claimed in 1641 "that the King is bound in honour to settle them in their lands, first by the composition made in the time of Q. Elizabeth, secondly by the letter of James I. of 21st July, 1615, and thirdly by the "graces" of 1628. *Cal. St. Paps.*, 1641, p. 275.

[16] *Cal. St. Paps.*, 1624, p. 507.

James I. and shall receive new patents at half fees" . . . furthermore an Act should be passed finally confirming their tenures.[17]

It is asserted by Leland (Book IV. Chap. 8) that the inhabitants actually had paid £3,000 to have their patents enrolled, and that it was due to the neglect of the clerks of the Court of Chancery that this had not been done.

From time to time we come across hints at a possible plantation of Connaught. And from about 1625 on we hear of a project of confiscation and plantation in the Irish districts in north Tipperary and Limerick.[18] It was reserved for Strafford, as I have said, to bring both projects into the sphere of reality with his usual thoroughness.

The Parliament of 1634 had passed an Act confirming all compositions made or to be made by Strafford's new Commission for remedying defective titles.[19] It had asked for an Act under

[17] *Cal. St. Paps.*, 1628, p. 330.
Leland says: "The surrenders were made, their patents received the great seal, but by the neglect of the officers neither was enrolled in Chancery."
In *Cal. St. Paps.*, 1647—60, Addenda, under 1635, Sir C. Coote is said to have been the person who neglected to enrol the surrenders, p. 213.

[18] *Cal. St. Paps.*, 1625, p. 73: suggestion to plant Lower Ormond. *Ibid*, 1629, p. 536. "People talk of planting the territories of Ormond, Arra, Owneymulrian, Ikerrin and Kilnamanagh. The King's title is good, and the gentry there are ready for a plantation." Lord Esmonde to Lord Dorchester. There are many other allusions to the project.
A possible plantation of Connaught is spoken of in *Cal. St. Paps.*, 1631, p. 612; also p. 639: it was proposed to deduct one-fourth from all who had over 200 acres, "but that all that have less, the said fourth being deducted, shall have all taken from them."

[19] This commission differed very much from that set up by James. It aimed at raising revenue by finding flaws in titles, and compelling the owners to pay fines for new titles, or increased quit rents.

which sixty years' possession should give a good title as against the Crown. This would have proved fatal to any projected plantations; hence the Parliament was dissolved in 1635 before such an Act could be brought in, and before the graces promised in 1628 had been confirmed.

In July, 1635, Commissioners were sent to Connaught to establish the title of the Crown. It was plain that on a legal quibble all or most of the patents granted under James I. were invalid. But the natives could and did point out that James in 1615 and Charles in 1628 had intended to secure the landholders in their estates. This argument was brushed aside on the ground that James' letter had been obtained on false pretences, for he had believed, or was supposed to have believed, that the conditions laid down in Perrot's Composition had been adhered to, whereas it was notorious that they had been violated in many cases. So James had been deceived, and his letter and the grace of 1628, based on it, might be set aside without dishonour to the King. Furthermore, Strafford denied that the inhabitants in Elizabeth's day had had any interest which they could surrender to the Queen, or compound for, as they were all mere intruders on the lands of the Crown.

On these lines it was easy to make the Crown's title evident. The juries of Sligo, Roscommon and Mayo yielded to government threats and found the verdicts required.

But in Galway a sterner resistance was met with. The landowners there had the powerful support of the old Earl of Clanrickard, a man of noted loyalty, connected by marriage with the new

official nobility—he had married Walsingham's daughter, and was step-brother to the Earl of Essex—and at the moment resident in England. Stiffened by his support the Galway jury refused to find for the Crown.

But the line they took was a curious one. The Crown title started from the conquest of Henry II., and an alleged grant of his to Roderick O'Conor, King of Ireland and Connaught, with a subsequent forfeiture and grant to De Burgo. The jury found that the acquisition of Henry II. was not a conquest, but a submission of the inhabitants, that the grant to Roderick was merely a composition whereby the King had only the *dominium*, but not the *property* of the lands. In both of these contentions they were undoubtedly right. But they apparently ignored the later dealings of John and Henry III. with Connaught which were the true foundation of the De Burgo title, and they started what looks a mere quibble when they found that, in tracing the descent to Edward IV., proof had not been made of Lionel, Duke of Clarence's possession (he had married the De Burgo heiress), and that the Statute of Henry VII. related to tenures rather than to lands. And when called on to declare in whom the freehold was vested (if not in the Crown) they refused to do so.[20]

The jurors were dealt with after the approved Tudor and Stuart methods of treating recalcitrant landowners. They were sentenced to pay £4,000 fine each, and to be imprisoned until they paid it; furthermore they were to acknowledge

[20] Carte: *Life of Ormond.*

their fault on their knees and in open court. The high sheriff was sentenced to pay £1000, and was thrown into prison, where he died. Finally, to punish the general body of landowners, they were to lose one-half of their lands in the plantation, instead of one-fourth as originally intended. Terrorised by these measures another jury found a title for the Crown in April, 1637.

The penalties were afterwards reduced or wholly remitted; and in particular the idea of taking one-half of their property from the Galway landowners was given up.

We learn from Carte that, as soon as the King's general title was found, an Act of the Council ordered that all who were possessed of lands in virtue of letters patent should enjoy their estates provided they produced their patents. Several did so and all were disallowed on the ground that the tenures in the patents were by common knight's service which was not warranted by the Commission. They were therefore voided as having been made in deceit of the Crown.

Those of Clare then immediately acknowledged the King's title to that county.[21]

Strafford writing from Limerick in August, 1637, to Lord Conway and Kilultagh says that "His Majesty is now entitled to the two goodly countries of Ormond and Clare . . . 'with all possible contentment and satisfaction of the people. In all my whole life did I never see, or could possibly believe to have found, men with so

[21] While the references to the plantation of Connaught and Clare are very few in the printed Calendars of State Papers there are numerous allusions to various projects for the plantation of Ormond and the adjoining Irish districts.

MAP V.

East Munster in the 16th Century.

much alacrity divesting themselves of all propriety in their estates, and waiting to see what the King will do for them. I, that am of gentle heart, am much taken with their proceeding."[22] The jesting tone of the remainder of the letter, and Strafford's reference to his tender heart lead one to wonder whether these remarks are the truth or merely a bitter jest at the helpless landowners.

By Ormond, in the above extract, is meant the whole district in north Tipperary and the adjoining part of Limerick inhabited by Irish clans.

Theobald Walter, ancestor of the house of Ormond, had got from King John a grant of five and a half cantreds of land, comprising the northern half of the modern Tipperary, Ely O'Carroll, now in King's County, and some districts now in Limerick. These territories had been fairly well conquered and settled, although in the hilly districts the Irish were never thoroughly mastered.

In the fourteenth century the Irish recovered the greater portion of the lands included in Theobald Walter's grant, though needless to say his descendants, who had meanwhile established themselves firmly in south Tipperary, still maintained their claims.[23]

[22] *Cal. St. Paps.*, 1637, p. 168.

[23] The O'Carrolls held Ely: the O'Meaghers Ikerrin; the two baronies of Ormond belonged to the O'Kennedys. O'Ryan had Owneybeg in Limerick, and part of Ara and Owney in Tipperary; another O'Ryan had Kilnalongurty in the modern Kilnamanagh Upper: Ileagh in the same barony was held by MacWalter Burke. Kilnamanagh Lower, with part of Kilnamanagh Upper, was the territory of O'Dwyer. Mac i Brien of Ara held the northern part of the barony of Owney and Ara. Another Mac i Brien held Coonagh which had not been included in the grant to Theobald Walter.

The Statute of Absentees vested all the lands of the heirs general of Thomas, seventh Earl of Ormond, in the Crown. But they were regranted to Piers, heir male of the family, and this grant was confirmed by a private Act of Parliament, 30 Henry VIII.

Henry VIII. had entered into indentures with all the Irish clans in these regions, and had thus implicitly recognized their position. The Ormond claims had become somewhat theoretical; apparently the Earls contented themselves with chief rents from the Irish occupiers, and with the recovery of the castles of Nenagh and Roscrea and some adjoining lands.[24] Their rights seem to have been entirely ignored in the various dealings with Ely O'Carroll. And James I. had given grants to several of the chiefs including in them fixed payments from the freeholders in lieu of the Irish uncertain exactions, thus recognising the clansmen as landowners.

But legal ingenuity was able to set aside all claims of the natives. They were intruders on the possessions of Englishmen—as a matter of fact the O'Briens of Ara certainly, and the O'Ryans and O'Kennedys probably, were really intruders, who had seized in the 14th century lands never previously held by them. Hence they had no title as against the Ormonds, and the Statute of Absentees had vested the Ormond title in the Crown. Then they had no title against the Crown, for no length of possession could avail

[24] The two baronies of Ormond paid a chief rent called the "Mart Early" which came to about £160: Esmond to Dorchester, *Cal. St. Paps.*, 1630, p. 577. Apparently this was paid to the Earl of Ormond, hence the name.

against the King. And finally if they abandoned law, and pleaded that that their long standing possession gave them an equitable claim to consideration they were told that since their lands had descended by gavelkind, and since that custom had been declared illegal, none of them could prove any real long standing title to the lands in their possession.[25]

There remained the title of the Earl of Ormond. There is a certain amount of doubt as to whether Henry's grant to Earl Piers had really included the whole of the lands in question.[26] Ely had been dealt with apparently without any reference to the Ormond rights, and the case of Ara seems also doubtful. Now the Crown lawyers seem boldly to have contended that none of these lands had been included in the grant. The Patent was not to be found in the ordinary rolls, although it was in the memoranda rolls of the Exchequer, and still exists; and they were unaware of the existence of the Act 30 of Henry VIII. confirming it. Therefore when the project of a plantation was first started it was supposed that no effective opposition could be offered by the Earl of Ormond.

But as a matter of fact the Ormonds had all the title deeds, and so were in a very strong position, as the Crown lawyers were acting more or less in the dark.

[25] Some years before Strafford's time there had been various projects for a plantation of these districts. One is given at p. 150, *Cal. St. Paps.*, 1647—60. Addenda, 1625—60, dated 1630. By this one-fourth was to be given to planters; the Earl, natives possessed of lands by virtue or pretence of patents and those having chiefries were to be favourably dealt with.

[26] It certainly included the baronies of Ormond. Rights and services due to the E. of Ormond from the cantred of Kilnamanagh are mentioned in *Cal. St. Paps.*, 1607, p. 195.

Earl Walter "of the Rosaries" had died before any effective steps had been taken towards a plantation, complaining bitterly that in spite of the eminent loyalty of his family he should be the first of the old Anglo-Norman blood marked out for spoliation.

His grandson and successor in the title, afterwards the great Duke of Ormond, was more prudent, or rather more selfish. His actual revenues from the disputed lands were small. He was promised special favours at the expense of the Irish under the plantation scheme for himself, and some two or three of his friends. Therefore he forebore to produce Henry VIII.'s grant, and in 1637 a jury at Clonmel found a title for the King.[27]

The troubles in Great Britain put a stop to any effectual proceedings in Connaught and Ormond. Before any of the landowners in these districts had been deprived of their lands, the English Parliament had deprived Strafford of his head.[28] And Charles was beginning to see that the loyalty of Irish Catholics might be worth cultivating as a support against the growing disloyalty of Scottish Presbyterians and English Puritans.

[27] A full account of these transactions is to be found in Prendergast: *Plantation of Ormond*. Trans. Kil. Arch. Soc. Vol. I. (1849). Carte says that the young Earl helped Strafford by *producing* the title deeds: Prendergast with more reason says he *refrained* from producing them.

[28] One confiscation was actually carried through by Strafford. The territory of Idough—the greater part of the barony of Fassadinin in Co. Kilkenny—was taken from the O'Brennans who had held it for centuries, and given to Wandesforde, Master of the Rolls. On an inquisition it was found that the O'Brennans were mere Irish who had entered and "held by the strong hand, and that they therefore had no title."

Wandesforde intended to compensate the dispossessed landowners: but his heirs got rid of their claims through the share they had taken in the events of 1641.

In March, 1641, he wrote confirming the "graces," and suggested that a Bill should be brought in for confirming sixty years' titles in Connaught and Ormond. Borlase and Parsons, the Lords Justices, protested against this and still urged a plantation. Nothing was done by July, when Parliament was prorogued. Before it met the great rebellion of 1641 had broken out. We cannot doubt that one of the contributory causes to it was the treatment of the landowners of Connaught, Clare and Ormond.

The confiscation and projected plantation in these districts never took effect, although a complete survey, now unfortunately lost, was made of all the lands affected; and after the Restoration the title of the Crown to Connaught was expressly renounced.[29] Its importance in Irish history is that it marks a progressive decline in the morality of English dealings with Ireland.

The statesmanship of the Tudors had, on the whole, been regardful of the rights of the Irish. They had utilised to the full the right of the sword, but they had seldom stooped to mere legal quibbles as a pretext for spoliation.

James I., or his advisers, had in his early years followed this course. Alongside of much injustice we find conscientious endeavours to deal fairly with those in actual occupation of land. But as time goes on we find a deterioration in the moral standard. The distinction between old Irish and old English is revived, to the disadvantage of the

[29] From Strafford's time, too, date the Inquisitions taken after the King's title to Connaught had been found, giving particulars of the landed property of the province. They are in the Dublin Record Office.

former; grasping officials have almost a free hand as regards extortion; musty parchments are brought to light in support of titles long forgotten. Matters become worse under Charles I. Neither old Irish nor old English are safe. Puritanism increases in high places, and at the same time to enrich himself seems to be one of the chief duties of a high official. It is unfair to apply to the 17th century the moral standards of the present day; yet if we read Mr. Bagwell's *Ireland under the Stuarts*, we can hardly fail to be struck by the fact that he seems to look on dishonesty as a normal quality of the official of the period. No doubt "the reason of state" can be invoked in defence of a good deal of this. An Irish Catholic with land seemed undoubtedly more dangerous than one without any; and English Kings had not yet realised that Puritanism was incompatible with loyalty. They were soon to be terribly undeceived; but in the meantime they had planted in Ireland a body of men hostile to the throne, while they had alienated those on whom they might have relied for its defence.

CHAPTER V

THE CROMWELLIAN CONFISCATION

Confiscations based on legal quibbles, religious disabilities, the fear that the government might yield to the fanatical party in England and Scotland which clamoured for the extirpation of Catholicism, the example of the successful rebellion of the Scottish Covenanters, all led up to the great upheaval of 1641.[1] The revolt, at first confined to the old Irish in Ulster, rapidly spread until it covered the whole island. It brought in its train a confiscation far more extensive than any which had gone before, that which is associated with the name of Cromwell.

This confiscation, the most sweeping, perhaps, that modern ages have seen, as it was the most complete has been also that which has left most impression on the popular memory. Legend has fixed on Cromwell and attributed to him the saying that he gave the Irish leave to choose between Hell or Connaught. And out of this has grown another legend, an idea widespread among politicians, that, namely, which represents him as attempting to root out from the soil of three-fourths of Ireland the whole mass of the Irish people.

[1] In general for the history of this period I have followed Prendergast's *Cromwellian Settlement*, and Dunlop: *Ireland under the Commonwealth*. For details *re* the settlement, see Hardinge in *Transactions of the Royal Irish Academy*, Vol. XXIV. Bagwell and Gardiner should also be consulted.

To study the actual work undertaken and achieved by Cromwell and his government is the object of this chapter.

From this study we shall find that whatever was Cromwell's first intention, and whether he did or did not offer the Irish the famous choice above mentioned, the weight of his hand fell in reality not on the mass of the people, but on the upper ranks of society and especially on the landed proprietors.

On February 14th, 1653, the lonely island of Inishboffin, off the coast of Galway, the last spot within the British seas over which the royal flag of England still floated, surrendered to the soldiers of the Parliament.[2] After eleven years of destructive warfare there was again peace in Ireland. Rather might one say that a stillness as of death reigned over the island. Over 600,000 people, men, women and children had, according to Sir W. Petty, perished during those years.[3] The survivors—still, according to Petty, about 850,000—were reduced to the utmost extreme of misery. Ireton on his march to besiege Limerick passed through tracts where for thirty miles together there was neither a house nor a living soul

[2] Cromwell had left Ireland on the 29th of May, 1650.

[3] It is probable that this estimate is far below the truth. In the early stages of the war the garrisons of Dublin and Drogheda carried on a veritable war of extermination against the natives.

"The inhabitants being all destroyed by the English garrisons for fifteen miles round and the dogs only surviving, they fed on their masters' dead bodies, and had become so dangerous for passengers that the soldiers were careful to kill them also." (Prendergast, following Barnard).

And the Census of 1659 attributed to Sir W. Petty gives the whole population as only about half a million. His published statistics and calculations cannot altogether be trusted.

left. County Clare had practically escaped the war, yet out of 1,300 plough lands only about forty were tilled. A plague, worse by far than the celebrated Great Plague of London of 1666, had added to the ravages of sword and famine. Thirty-four thousand able-bodied men had laid down their arms and passed beyond the seas to acquire under the banners of France and Spain that discipline and resolution which might have saved their fortunes at home.

It is necessary to go over in a few words the history of those eleven years.

Five distinct parties each with its own army had been at one another's throats during that period.

There were two English Protestant factions, two Irish Catholic and one Scotch Presbyterian. The history of the time is a tangle of confused strife.

The Ulster Catholic Irish had risen in arms on October 23rd, 1641. They were soon joined by their co-religionists of old English descent in the Pale round Dublin. The rebellion spread till almost the whole island was involved.

Then came the outbreak of the civil war in England between Charles I. and the Puritan majority of the English parliament in August, 1642.

The effects of the English civil war were soon felt in Ireland. The Lord Lieutenant, the Marquis of Ormond, held Dublin and Drogheda as well as a large part of Leinster for the King. To this Protestant Royalist party belonged the majority of the Protestant landowners in Leinster and Connaught, as well as some leading Catholics such as the Marquis of Clanrickard.

In Munster, at the outbreak of the rebellion, the city of Cork and the towns of Youghal and Kinsale, true to their old traditions of loyalty to the English crown, had shut their gates against the rebels, and given every assistance to the government. To them flocked for refuge all the Protestants of the neighbouring counties. Most of these were descendants of the men to whom Queen Elizabeth had granted the estates forfeited in the Desmond rebellion. They came from parts of England where Puritanism was strong, and most of their descendants in 1641 were in entire sympathy with the English parliament and opposed to the King.[4]

The parliament managed to get control of the troops sent from England to the relief of the Munster garrisons; and when they had come to an open conflict with the King they won over the Munster Protestants to their side. The chief men of this party were the Norman Irish Earl of Barrymore, the English Boyle Earl of Cork and his numerous family of sons, and above all the celebrated Murrough O'Brien Baron of Inchiquin, whose atrocities earned him the name of "Murrough of the Burnings." He got complete control of Cork in 1644 by expelling the whole Catholic population.

The Scots had already formed considerable settlements in Down and Antrim in addition to those in the "Plantation Counties."[5] To protect

[4] That is to say such of them as were still Protestants. Many of the descendants of the Elizabethan settlers were Catholics in 1641.

[5] These settlements in Antrim and Down had, as I have said before, come about through peaceful penetration. It is curious to find that the MacDonnells and Magees from the Isles were now looked on as being Irish because they were Catholics.

these the Scotch parliament sent over a force of 10,000 men under General Munro, by whose aid they established themselves firmly round Carrickfergus. The Scots joined the English parliament against the King, and so were more or less in alliance with the English of Munster and opposed to those of Dublin.

Division too, showed itself in the Irish ranks. There was a large and influential party in favour of a peace with Charles I. on conditions which would secure their lands, free them from the most oppressive of the penal laws, and allow them to join their forces to those of the King and overthrow those of the parliament. The chief men of this party were the old Anglo-Norman families of the Pale, and of the district round Kilkenny.

But there was another party composed chiefly of the Ulster Irish who demanded the restoration of all the lands confiscated in Ulster by James I., the restoration of the greater number of the churches and complete religious freedom. At their head we soon find the able Italian Nuncio of the Pope, Rinuccini. This party held that the best means of securing their designs was a vigorous prosecution of the war. If once all Ireland was in their hands they could dictate what terms they liked to the King as the price of their aid.

We can now see that either policy would have worked. If one or the other party could have got the upper hand and carried the nation with it they could have obtained as many reforms as might reasonably have satisfied them. The English royalists if backed by the whole force of the Irish

royalists in the critical years of the civil war could have overcome the puritan party in England. Or if the extreme party had carried the day they could easily have conquered all Ireland, and then have made their own terms with Charles.

But the two Irish parties were so evenly balanced that neither could definitely gain the upper hand. They could not agree as to coming to terms with the King, and they would not prosecute the war with the necessary vigour against his representatives in Ireland.

For a moment the warring factions were reduced to two by the disappearance of the Protestant royalists. Ormond, acting on the King's orders to surrender Dublin, if hard pressed, rather to his English rebels than to his Irish rebels, left Ireland in 1647, and handed over Dublin and Drogheda to the parliamentary General Jones. Jones was in close alliance with the Scots, and the disappearance of the Royal authority caused the two Irish parties to join against the common foe, the English rebels.

But scarcely was the Royal authority withdrawn from Leinster than it was restored in Munster. Inchiquin, having grounds of complaint against the parliament, made overtures to the royalists. Ormond was invited back, Inchiquin brought the Protestant garrisons of Cork, Youghal and Kinsale over to the King's side, and the two managed at last to come to terms of peace with the majority of the Confederate Catholic Government at Kilkenny.

Scarcely was peace made when the execution of Charles I. by his rebellious subjects sent a thrill

of horror through Europe. The French Protestant clergy thought it necessary to publish a manifesto expressing their horror of the deed; the Dutch Calvinists broke off all relations with England; Scotland proclaimed Charles II. as King. The effect in Ireland was immense. The Ulster Presbyterians one and all declared for Charles II. Ormond and Inchiquin entered Kilkenny and joined their forces with those of the Confederate Catholics.

For a moment, however, the Ulster Irish stood aloof, and even united with the Puritans. But they, too, rallied to the Royal cause; and soon the three nations and the three religions in Ireland stood side by side in arms for the King. Outside Dublin, Drogheda and Derry the Royal flag waved over the whole of Ireland.

There followed the invasion of Cromwell, and the complete conquest of the island, into the details of which we need not enter. In August, 1652, before the war was fully ended, the parliament in London passed an Act called "An Act for the Settling of Ireland."

This is one of the most extraordinary documents ever produced by any body of legislators. It divided up into categories the whole population of Ireland, condemning some to death, others to banishment, others to loss of all or some of their estates, pardoning others.

By it, as Mr. Dunlop puts it, " not one single person of whatever nationality he was—Irish, Scottish or English—was exempted from the consequences of participation in the rebellion, either by having to lose his life or his property, partially

or altogether, unless he could prove that he had been constantly faithful to the interest of England as represented by the parliament, or by subsequent explanations could plead some special act of favour on his behalf. How utterly impossible it was for almost anyone to comply with this monstrous demand was shortly to appear."[6]

First came five classes of persons exempted from pardon for life and estate—condemned, that is, to lose their lives and forfeit their property.

By the first clause it was enacted that all or every person or persons who, at any time before November 10th, 1642,[7] have contrived, advised, councilled, acted or promoted the rebellion, murders or massacres—or have, at any time before the said 10th of November by bearing arms, or contributing men, arms, horse, plate, money, victual, or other furniture or habiliments of war—aided, assisted, promoted, acted, prosecuted or abetted the said rebellion, murders or massacres be excepted from pardon for life and estate.

The second clause pronounces the same penalty against all and every Jesuit, priest or other persons who have received orders from the See of Rome, if they had been in like manner guilty of contriving, advising, counselling, promoting, continuing, countenancing, aiding, assisting or abetting the rebellion or war in Ireland, or any of the murders or massacres, robberies or violences committed against the Protestants English or other there.

During the war all priests who fell into the

[6] Dunlop: Vol. I. CXXXIII.

[7] This was the date of the meeting of the Confederate Assembly which organised a regular government.

hands of the English troops were knocked on the head, or hanged or shot as a matter of course. But by the various articles of surrender made with the different Irish forces the lives of all priests under the protection of those forces were secured to them provided they left the country by a certain date. The parliament undertook to provide for their transportation abroad, and many thus were shipped to Spain and other continental countries.

But many remained secretly in the island, and others soon slipped back from exile. Some of these, when caught, were transported to the West Indies. Others were confined on the island of Inishboffin, where many sickened and died from want of food and housing.

Yet, in spite of all the efforts of the government, a certain number remained at large, and secretly ministered to their co-religionists. It does not seem that once the war was over, any priests were put to death merely for being priests or for saying mass. It is well known that the English law punished all priests with death, and that some ten were executed under Charles I., who was, as we may remember, accused by the Puritans of showing too great favour to Popery, besides twelve more under the Parliament. This law was after a time allowed to fall into abeyance in England by the Republican Government. In Ireland there had never been any such law, and in spite of the threat to introduce this statute—the 27th of Elizabeth—no attempt seems to have been made to carry out this menace.[8]

[8] January, 1652—3. A proclamation that all priests who do not leave within twenty days, or who return after leaving, will be subject to the penalties of the 27th Eliz.

It is the third clause of the "Act for the Settling of Ireland" that must have appeared to that age the most extraordinary, and that may perhaps account in great measure for the reputation which Cromwell still enjoys in this country.

It condemned by name one hundred and five persons as specially marked out for the death penalty.

First on the list was the Lord Lieutenant, the Protestant Marquis of Ormond. Next came the English Catholic Earl of Castlehaven, and he was followed by the Lord Lieutenant's Deputy, the Irish Catholic Earl of Clanrickard. Number five on the list was the Irish Protestant Earl of Roscommon, number seven was the Irish Puritan Baron of Inchiquin, number twelve was the Scotch Presbyterian Viscount Montgomery.

Other names included Bramhal the Protestant Bishop of Derry, and Sir George Munroe, Sir James Montgomery and Sir Robert Steward, all leading Ulster Presbyterians, and ferocious opponents of the Irish Catholics.

Finally there was what one is tempted to call a job lot of Earls, Viscounts, Barons, Knights, Esquires and minor individuals dignified by no title of honour, but including practically all the chief Catholic landowners in the country.

Now it must be remarked that we have no means of knowing whether it was ever intended to carry out the death sentences pronounced in the first and third clauses. But it is certain that they were not carried out. Of the 105 leading men mentioned by name some escaped to the Continent. The others all came under a clause at the end of

the Act which provided that they were to have the benefit of any articles of surrender which had been granted to them at the time they laid down their arms.[9] And of those in the first clause some were equally protected by terms of surrender, the others were insignificant people against whom the new government did not trouble to proceed.

Very different was the case of those condemned to death and forfeiture by the fourth clause. This pronounced sentence of death on all who had both as principals and accessories since October 1st, 1641, committed murder.

But it defined murder as the killing of any person not publicly entertained and maintained in arms by the English, and furthermore as murderers were to be held all who had killed any Englishman so entertained and maintained in arms if the killer had himself not been an officer or soldier in the pay of the Irish against the English.

Now during the first weeks or even months after the rising the Irish had had, over large districts at least, practically no organised forces. Therefore anyone who had killed an English soldier in fair fight in those months and those districts would, under the second part of this definition, be counted as a murderer.

Moreover, on the first news of the rising, many English landowners dwelling in strong castles had put these into a state of defence, armed their English tenants, and such of the Englishry as took

[9] Lord Clanrickard, for instance, lived for a time unmolested in England. Cromwell or his government actually aided in obtaining the release of Inchiquin from the Barbary pirates into whose hands he had fallen.

refuge with them, and not only successfully defended themselves against all attack, but in many cases had made counter attacks against the Irish in their neighbourhood. And they had in these counter attacks shown no mercy. Prisoners were hanged, women and children slain in cold blood. There are few more horrible records of atrocities extant than the diary which complacently sets forth the exploits of the garrison of Manor Hamilton. Yet as these English landowners and their followers could scarcely have been said to have been publicly entertained and maintained in arms, any Irishman who in self-defence had killed one of them was liable to be accounted as a murderer under the first part of the definition.

And that people were executed under this clause as "murderers" merely for killing armed Englishmen is shown by at least two cases.[10]

And while the definition of murder was thus strained against the Irish, no mention was made of punishing the horrible murders of defenceless women and children which fill whole pages of some of the records left by English officers, and of the official reports to the Lords Justices.[11]

Mr. Gardiner, in his article in the English Historical Review on "The Transplantation to Connaught" estimates that clauses one and four of the Act condemned to death perhaps one hundred thousand Irishmen.

[10] Golden, in Co. Tipperary; and Tromra, in Co. Clare. See Miss Hickson, *Ireland in the Seventeenth Century*, and the notes to O'Flaherty's *Iar Connaught*.

[11] The records of murders done by the English mostly come to us from the accounts of the English perpetrators themselves. So the massacres of Clonakilty, Carrickmines and Rathcoffey are known to us from English sources.

Yet the number of those who actually suffered death was not very great. No one was, as I have stated, executed under clause one. In Ulster it has been said that the only execution for murder was that of Sir Phelim O'Neill, the leader of the rising. In the other provinces somewhat over two hundred persons were put to death.

The trials, as the law was administered in those days, were not flagrantly unfair, and where there were cases of unjust condemnations, unjust even by the standards of that age, the victims were mostly from the upper ranks of society. Thus Lord Mayo, and Colonel Bagenal, head of a family of Elizabethan planters, were both held at the Restoration to have been unjustly condemned. So, too, the evidence against Lady Roche of Fermoy, and the aged Mrs. Fitzpatrick a near relation of the Lord of Upper Ossory, who were hanged, or according to some accounts burned to death, seems to have been of the flimsiest character. Among people of meaner rank the number of acquittals was fairly high.

There remained three or four more classes of comparatively "innocent" Irish, and it was these and these alone who were allowed to fall back on Connaught as an alternative to a less damp but warmer climate.

First of all there were those who, not having joined the war before November 10th, 1642, had at any time served against the parliament as colonel or in any higher rank, or as governor of any castle or fort. They were to be banished for life, and their estates confiscated. But their wives and children were to receive lands to the value of one-

third of their former estates wherever the parliament should appoint. It is to be noted that to have borne arms against the *parliament* was the ground for condemnation here.

Secondly those who since November 10th, 1642, had at any time borne arms against the parliament, but had not served as colonel, etc. were also to receive lands equal to one-third of their former estates wherever Parliament should appoint; but were not to be banished.

Now in these two clauses there is no mention of religion. They hit the Scotch Presbyterians of Ulster and most of the Protestant landowners of Leinster just as hard as they hit the Catholics, for they at one time or another had borne arms against the parliament in the cause of the King.

Even most of the Munster Protestants had for a moment in 1648 and 1649 lapsed into loyalty. It is true that most of them soon repented and by a sudden revolt from the King betrayed Cork, Youghal, Kinsale and Bandon to Cromwell at a moment when his position seemed desperate. He had been beaten back from Waterford, and had cut himself off from his base on the Leinster seaboard. The opportune revolt of these Munster garrisons enabled him to establish himself in a new base, where he was able to rest his famished and plague-stricken army and refit it by means of the sea from England.

Accordingly we find that all those Munster landowners who could prove that they had taken part in securing these towns for the parliament received a free pardon for their momentary adherence to the royalists.

The next clause specifically makes mention of religion. It provided that all persons of the Popish religion who had resided in Ireland at any time from October 1st, 1641, until March 1st, 1650, and had not come under any of the previous clauses were to lose one-third of their estates, and to get lands equal to the other two-thirds wherever the parliament might appoint, unless they could prove constant good affection to the commonwealth. And all other persons, *i.e.* Protestants, who had been in Ireland at any time during the same period were to forfeit one-fifth of their estates unless they could show that they had been in actual service of the parliament or had otherwise manifested good affection to its interests having opportunity to do the same. It is to be noticed that they were not required to prove *constant* good affection, and that they were to keep four-fifths of their actual estates.

Now the capital value of land in the 17th century was estimated to be ten years of the rental. These Protestants then were ultimately required to pay two years' rent to the parliament. And to the other Protestants who were to forfeit two-thirds a concession was afterwards made. They were allowed, if they accepted the Republic, to redeem all or some of the two-thirds by paying heavy fines, and were not removed to other parts of the country. Thus the Earl of Clanbrassil had to pay £9,000, about £25,000 of our money, for his estates and Lord Montgomery £3,000.

Those Protestants who refused to acknowledge the Republican Government lost all their estates, as did those Catholics who refused to submit. It

would appear from a report of the Commissioners for executing the Act of Settlement after the Restoration that at least 168 loyal Protestant landlords, besides the Duke of Ormond, had their estates confiscated and that their properties amounted to close on 180,000 acres (over and above what had already been voluntarily restored to some of them by the Cromwellian grantees).

Those Catholics who could prove "Constant Good Affection" were apparently to retain their former estates.[12] But the clause was so worded and interpreted that they had to give proof of having actually rendered service to the parliament. This took away the estates of lunatics and minors, women, bedridden and crippled persons who were never engaged in the war or had never acted against the parliament. The mere fact of their having resided in Ireland between 1641 and 1650 caused them to forfeit their estates.[13]

Here, by a curious irony of fate, we meet the Elizabethan undertakers the Brownes of Cosh Maing and Ross O'Donoghue. The original Browne had been a zealous Protestant. But his son, disappointed in obtaining the hand of the heiress of the Earl of Clancarthy, fell back on the next most powerful family in Desmond, and married the daughter of O'Sullivan Mór. And

[12] So, too, any Catholics who could prove that they had been absent from Ireland during the whole of the specified period were to retain their estates.

[13] See the case of Lady Thurles an Englishwoman but a Catholic, mother of the Marquis of Ormonde, as set forth by Mr. Dunlop, Vol. II., p. 606. She had always helped the English to the best of her power, and had even assisted Cromwell himself; but the fact that she had continually resided in the Irish quarters prevented the judges from deciding that she had shown "constant good affection."

this lady succeeded in bringing up her children as Catholics, and, as is well known, her descendants have since adhered to that faith.

Now in 1641 the head of the family, Sir Valentine Browne, was an infant, three years old. He could of course have taken no part in the rising, or in the war that followed. But equally of course he could have rendered no service to the Parliament, so that he, just like any mere Irishman, had to leave his estates, in order to receive lands equivalent to two-thirds of their value wherever parliament might appoint. The same fate befell the head of the rival family who claimed to be the real owners of Cosh Maing and Eoghanacht O'Donoghue, namely, Daniel or Donnell MacCarthy Mór of Pallis, the descendant of the lady Ellen and Florence son of the Lord of Carbery. This Daniel, too, was a minor, and both he and Sir Valentine Browne were among the fortunate few who were restored to their estates under Charles II.

As for those Catholics of full age and sound in mind or body who had resided in Ireland during the years mentioned, for them to have displayed constant good affection to the parliament would have been almost as impossible as it would have been to expect an Irishman who resided in Ireland at the time of the American Revolution to have shown affection to the American Republican Government. During these ten years the parliament had had little or no footing in Ireland outside Munster and part of Ulster, and when Cromwell landed the Royal authority was supreme all over Ireland except in Dublin and Derry.

The citizens of Dublin were the only considerable body of Catholics who had never done anything against the Parliament. Up to 1647 they had been under the authority of the King's Lord Lieutenant, Ormond, but had never been in collision with the parliamentary forces. Ormond in his negotiations in 1646 and 1647 for the surrender of Dublin and his other garrisons to the parliament endeavoured to secure guarantees that the Catholics who had been under his protection should be secured from molestation.[14] But he does not seem to have been able to get any definite pledge from the parliament. When Jones took possession of Dublin in 1647, it would appear that he expelled many of these Catholics who for six years had been fighting against their own countrymen and co-religionists. Those not so expelled were forced to take leases of their own houses from the republican soldiers. It was now provided that holders of such leases were to keep them.

In the rest of Ireland, according to Sir William Petty, twenty-six Catholic landowners, owning between them 40,000 acres (*i.e.* 80,000 English acres) proved Constant Good Affection. Almost the only considerable person among them was the Knight of Kerry, whose lands, largely bog and mountain, must have accounted for a very large proportion of the 40,000 acres.[15]

[14] Ormond stated to the Commissioners of the Parliament in 1646 that the "number and quality" of these "Loyal Papists" were considerable.
Cox: *History of Ireland.*

[15] Another was Sir Daniel O'Brien of Doagh, near Ennistymon, in Co. Clare.

With the exception, then, of these fortunate twenty-six, every Catholic landlord in Ireland lost his estates. Those who came under the first five clauses of the Act lost everything, unless they had been members of one of the armed forces which had secured special terms of surrender. In this case they would be in the same case as those in the favoured classes; they would receive, that is, lands equivalent to one-third or two-thirds of their former estate in whatever place the parliament might appoint.[16]

So far, there is no mention of actual transplantation. The comparatively "innocent" from the parliamentary standpoint, were to lose their actual lands, and to receive partial compensation wherever parliament might appoint, but it was not stated that they themselves would be forbidden to reside wherever they chose.

But at the end of the Act there is a foreboding of what was to come. There was a proviso that all persons who had obtained special terms of surrender were to benefit by them, in spite of anything to the contrary in the preceding clauses, but that the government might, if they saw fit, *transplant* them from their former place of habitation to wherever it might judge most consistent with the public safety.

Curiously enough the first proposals to transplant any one under this clause refer not to the Catholics but to the Ulster Presbyterians. It was suggested that all their chief men should be removed from Down and Antrim, as being too near

[16] This proviso exempted a very large number of landowners, especially the Lords of the Pale, from the penalties of clauses 1 and 3 of the Act.

their native Scotland, and given lands in the Counties Kilkenny, Waterford and Tipperary. It is curious to speculate on what might have occurred had this been carried out. Would Waterford and not Belfast have been to-day the commercial capital of Ireland, or would the soft Munster air have proved too much even for Scottish vigour?

The plan was given up, apparently because too hard to carry out. The English Presbyterians were now at variance with the ruling Independent faction and might have taken up the cause of their co-religionists of Ireland, in which case Scotland, which had not yet been thoroughly subdued, would certainly have broken out again.

Gradually, however, the new scheme of settlement took shape. But it was not definitely announced until late in the year 1653, several months after all resistance had ceased.

In short there were to be two Irelands, one English east of the Shannon, in which a new colony might be planted free from all fear of contamination by admixture with the natives, the other comprising Connaught and Clare where alone those natives who had failed to prove constant good affection might hold land.

The reason for choosing Connaught and Clare as the place of confinement for the Irish is obvious. The Shannon, the Lower Erne and the woods, bogs and mountains of Leitrim cut this district off from the rest of the country. And, to secure against all possibility of the Irish breaking bounds, they were not to be allowed to live within four miles of the Shannon, or of the sea, nor on any of the islands

of the coast.[17] Thus they would be effectually shut off from all communication with the outside world.

It appears quite untrue to say that Connaught was chosen as being the poorest and most barren part of the country. Ulster in the 17th century had that distinction. The Parliament when raising money to put down the Irish rising declared that they would give one acre of land in Leinster for every 12*s.* advanced, one in Munster for every 8*s.*, one in Connaught for every 6*s.*, and one in Ulster for 4*s.* Besides Connaught and Clare must have suffered much less than the rest of the island during the preceding years of strife. Between 1642 and 1651 Clare had been practically undisturbed and though the Scots had more than once devastated Connaught with great ferocity, the destruction of property cannot have been nearly as great west of the Shannon as in those parts, such as most of Leinster, exposed in turn to inroads from all of the contending parties.

It was in September, 1653, that it was at last announced that Connaught and Clare had been selected as the region where all those Irish entitled to lands by the preceding Act were to receive them. All the Irish were to remove beyond the Shannon before May 1st, 1654. Any found on this side of the river after that date were to suffer death.

[17] If this plan had been carried out the inhabitants of Achill, the Aran islands, Inishboffin, &c. should now be all of British descent. But the names of the present inhabitants, their language and characteristics show that the intermixture of British is so small as to prove that this scheme was never carried through, perhaps was never even attempted.

To carry out the work an elaborate machinery was set up. All who claimed lands were to proceed to Loughrea where commissioners for this purpose were to give them temporary allotments for their support, until another body of commissioners sitting at Athlone should have time to try each individual case, and decide whether the claimant was to receive lands to one-third or two-thirds of the value of his former estate.

As practically the whole nation, Catholic and Protestant had been in arms against the Parliament, it was held to be the simplest plan to consider every man guilty, and his estate forfeited, until he proved the contrary. This is the special feature which distinguishes this confiscation from all others. It was not necessary that the government should prove *guilt;* it was necessary that the landowner should prove *innocence.*

Accordingly practically every landowner was required to show cause why his estate should not be seized, or why, if it had been seized into the hands of the government he should recover it.[18]

There were of course some great Protestant landowners as Lord Barrymore in Cork, Lord Kerry, and Lord Thomond who, as was well known to everyone, were Protestants and had either fought for the parliament, or else had been absent from Ireland during the war. They no doubt got back their estates as a matter of course. But for the others, they had first to prove that they

[18] So the Kilkenny estates of Wandesforde, son of the Master of the Rolls who in Strafford's time had ousted the O'Brennans of Idough were sequestrated until he obtained a decree of "good affection." Prendergast, p. 135.
So also Lord Meath had great trouble in recovering his property.

were Protestants, and then meet the awkward question since what date. For the parliamentary authorities had noticed that since 1652 quite a number of landowners had been struck with the advantages of the reformed religion.

Ministers were therefore directed to hold Godly converse with such people whose Protestantism was of a recent date, and to endeavour to judge how far the conversion was real, how far it sprung from a desire to hold on to landed estates. If real they were to be dispensed for a time. But having proved that he was not a Papist the landlord was not yet out of his difficulties. Had he ever served his king against the forces of the Parliament? If so, he must go off to Athlone and there seek for lands in Connaught equivalent to one-third of his former estate. Or if he had never fought for the King he might have paid taxes or helped in some way to support his army. If so, a portion of his lands were to go, even if he had not to seek a new assignment in Connaught. Perhaps, however, he came safely through all these toils and showed good affection—an occasional lapse into loyalty was condoned in the case of Protestants—then he could keep his estate or recover it if it had already been given away to some follower of Cromwell's.

However the Parliament soon found that it would be impossible to move even all the Irish Catholics before May 1st, 1654, so by a special grace all these delinquent Protestants were allowed to compound for their estates by paying a sum of money, and were apparently allowed to settle directly with the authorities without having to go off to Athlone in the depths of winter.

There is one case on record of these Protestant landowners which is such a curious example of how the English settler of one generation had in the next become an Irishman whose property, itself acquired by confiscation, might now be disposed of again to a brand new Englishman, that it deserves to be quoted.

The poet Edmund Spencer had served in Ireland as secretary to the Lord Deputy Grey in Elizabeth's day. As a reward he had received grants of land in various parts of the country which had been confiscated from the Irish proprietors. Of these the chief estate was the castle and lands of Kilcolman not very far from Buttevant. Spencer had distinguished himself as a political writer by propounding various ingenious plans by which the Irish might be exterminated by famine.

He had married an Englishwoman of the Boyle family and left several sons, of whom one, in due course, inherited Kilcolman. But this son, following the example of hundreds of the other Elizabethan settlers, married an Irishwoman and a Catholic. He was apparently dead in 1641 when the rebellion broke out, leaving a son aged seven, William by name, under the care of his mother. When the County Cork joined in the rising Mrs. Spencer and her son fled to Cork, and during the whole course of the war remained in the English quarters, receiving no profits from Kilcolman. As soon as young Spencer came to years of discretion he utterly renounced the Popish religion in which his mother had brought him up.[19] But as in 1641

[19] This at least is his own account.

he had been counted a Catholic his lands were given out to Cromwell's soldiers in due course, and his profession of Protestantism was not enough to recover them.[20]

Off he had to go to Connaught like any other mere Irishman in 1654, and not until 1657 was he able to get his case brought before Oliver Cromwell himself, who on account of the usefulness of his grandfather the poet's writings touching the reduction of the Irish to civility, ordered the restoration of his estate.[21]

And Spencer's case was not singular. The sons of those who under Elizabeth had been the greediest plunderers of the Irish were now packed off to Connaught on the charge of being Irish Papists.[22]

The fate of the inhabitants of Cork is particularly curious. The citizens of Cork, and the townsmen of Youghal and Kinsale were proud of their unblemished English or at least Danish descent. Not only did the law up to the time of James I. forbid marriages between the English and the Irish, but in all the towns local bye-laws

[20] In the list of transplanted persons in the Ormond MSS. we find W. Spencer, late of Killcollman, "by virtue of an order of his Highness' Council." No acreage is given as assigned to him.

[21] Yet he does not seem to have been restored until the time of Chas. II. His property was set out in 1654 to Capt. Peter Courthorpe and others.

Another of Spencer's grandsons, Hugoline, was also dispossessed of his property, and was restored as an "Innocent Papist" in Aug., 1663.

[22] Besides the Brownes of Kerry, the Bagenals of Carlow, the Wolverstons of Stillorgan, the Mastersons of Wexford lost their estates. In Limerick the Walshes of Abingdon, the Fittons of Any, the Rawleys or Raleighs, the Thorntons, and even a Gromwell or Cromwell all figure in the lists of forfeiting Irish Papists.

repeated the prohibition, and we may be sure that commercial jealousy saw that these laws were observed. One of the Blakes of Galway shortly before 1641 declared and actually proved in a petition that, though his ancestors had been for over 400 years in Ireland, not one of them had ever defiled the purity of their English blood by marriage with an Irishwoman.[23]

When the insurrection broke out in 1641 the townsmen of Cork, Youghal and Kinsale, who were all Catholics, remained true to their old traditions of loyalty, and declared for the English.

They gave shelter to all the fugitive Protestants from the country districts, admitted English garrisons inside their walls, and the Corkmen advanced £30,000 towards paying the expenses of the English army besides providing them with food and lodgings. As a reward for this loyalty they and the Catholics of Youghal were all turned out of their homes and driven outside the walls by Inchiquin and the Puritans in 1644. On this occasion they were plundered of all their property, their losses amounting to £60,000, and they were left with their wives and children without one bit to put into their mouths. And some of them had their throats cut by the Irish as being partisans of the English.

When Inchiquin revolted from the parliament to the King in 1648 these people were allowed back to their homes. But when in less than a year's time the English garrisons revolted from the King

[23] This was apparently on the occasion of Strafford's projected plantation.

to Cromwell they were again expelled, this time in the dead of an October night, and again robbed of all they possessed. But the Cromwellian government had some regard for their sufferings. It was provided that their having lived among the Irish during the period of their expulsion was not to be counted as an act of hostility to the parliament, and they were allowed to return to their homes and dispensed from going to be tried at Loughrea or Athlone. In 1656 the Connaught Commissioners, having finished their work in that province, came to Mallow and opened a court there to try the cases of the landowners and inhabitants of Cork, Youghal and Kinsale.

They seem to have conducted the trial as fairly as could have been expected. The townsmen were represented by English Protestant lawyers, who discharged their task conscientiously.[24] The court began with the inhabitants of Kinsale whose case was the strongest. Not only had they remained loyal, but they had fought against the insurgents, who had assaulted and very nearly taken Kinsale in 1641 or 1642. They had always kept watch and ward on the walls alongside of the English troops, and had not been turned out of their homes in 1644.

The first case heard was that of one Thomas Toomey, a shipwright, who owned a house in Kinsale. It was proved that he had helped to close the gates against the Irish and had served as a corporal under an English captain during all the time

[24] At least from their names, Hoare and Silver, we may presume they were English. Mr. Fisher, Mr. Jones, Mr. Barber are also mentioned; they seem to have appeared for the Protestant delinquents.

the town was in danger of attack. But when Inchiquin and his English troops revolted from the parliament to the King in 1648 Thomas and all his fellow-townsmen had remained in the town, obedient as always, to the orders of their English masters. Inchiquin, as he had done before, levied a tax on the town to support his troops. If anyone refused to obey the order, issued in the King's name, his goods were seized. Thomas Toomey and all the rest of the townsmen paid up their quota, as they were legally bound to do, to the King's general. They did not wait for their goods to be forcibly seized. But by having paid only one such contribution, not taken by actual violence, to the royal war chest they were held to have been wanting in Constant Good Affection, and judgment was therefore given that Toomey must go to Connaught and there receive lands equal to two-thirds of his former property.

The court then carefully considered eighty-six more cases, those of men who like Toomey had been zealous in the English cause. But in every case the verdict was that the petitioners had failed to prove constant good affection, and so must lose one-third of their property and transplant to Connaught. The Protestants in these towns were of course most of them in a similar case; but as Protestants they were not required to prove constant good affection, and, at the most, seem only to have lost one-third of their property, without having to transplant. Besides many of them had been sharers in the revolt of the garrison back again from the King to Cromwell and so all former acts of loyalty on their part were forgiven.

But one and all, the Catholics of Kinsale declared that they would not go to Connaught among their enemies the Irish, who hated them as traitors to their religion, and some of them said they would rather be transported to Barbadoes than to Connaught among the rebels. Rather than do so they would forfeit all their possessions. And on the report of the judges Cromwell exempted them from transplantation and allowed them some proportion of lands in the baronies of Muskerry and Barrymore, provided they were distant at least two miles from any walled town or seaport.[25]

Now comes the question who were to be transplanted into Connaught. The first idea seems to have been that all the Irish were to be moved there. It was certainly so interpreted at first by the Irish. In order to carry out the transplantation all landowners were required to hand in to officials named for that purpose a description of themselves, with the number of cattle, horses, pigs, &c. which they owned, and a list of all their servants and tenants who were to transplant with them. These lists are still extant for Munster, and for eleven counties of Leinster. In some cases in Kerry these lists plainly show that the landlord was accompanied by all his tenants. One such has over 900 names in it. For some reason or other in the Counties of Kerry and Tipperary the transplantation was

[25] A fairly complete account of these proceedings is given in Prendergast. The Act of Attainder of 1657 excepted them from transplantation, and provided that they were to receive the equivalents for their former property in these two baronies. At the Restoration they were mostly dispossessed of their allotments without in all cases recovering their original property. The inhabitants of Fethard were also dispensed from transplanting, owing to the terms granted them by Cromwell.

much more extensive than in others. Sixty-six Kerry landlords were transplanted with nearly 5,000 followers. In Tipperary the clearance is said to have been so complete that no Irish inhabitant was left in certain districts able to point out the boundaries of the various territories and lands in them, and four fit and knowing persons had to be sent back in December, 1654, to the barony of Eliogarty to give the surveyors the information they required.

But soon it was found that there were difficulties in the way of such a complete clearance. The time limit, May 1st, 1654, was extended, first in particular cases then more generally. And as late as July, 1655, the transplantation was not fully accomplished. Some of the Irish declared they preferred death to transplantation. Accordingly one or two landlords were hanged, to encourage the rest, and a certain number were shipped as slaves or indentured labourers to the West Indies.

But meantime many of the English had begun to object to a complete transplantation of the whole native population. They declared that they could not get Protestant tenants to cultivate the farms, and that they themselves being soldiers or townsmen could not cultivate the land themselves, neither could they get labourers from England.

Already the Act of 1652 had declared that it was not the intention of Parliament to extirpate the whole nation, and had pardoned all ploughmen, husbandmen, labourers, artificers, and others of the inferior sort, if they were not possessed of goods to the value of £10, and if they did not come under those classes excepted from pardon. Unfor-

tunately practically all of them, outside some few towns, would, if old enough to bear arms in 1642, have taken part in the rising, and so this concession was practically valueless.

Now appeared a famous pamphlet called The Great Case of Transplantation Discussed. The author, Vincent Gookin, was the son of an Englishman who had settled in Co. Cork in the time of James I., and was one of the six members sent by the Irish Protestants to Cromwell's Parliament —the first Union Parliament—in 1653.

In this pamphlet he declared that the new settlers had need of the Irish lower orders—poor labourers, simple creatures, whose sole design was to live and maintain their families, the manner of which was so low that their design was rather to be pitied than by any body feared or hindered. They alone could till the land, and so enable the new English landholders to live.

He gives rather unexpected testimony to Irish industry. "Few of the peasantry," says he, "but were skilful in husbandry, few of the women but were skilful in dressing hemp and flax and making woollen cloth. In every hundred men there were five or six masons and carpenters at least, and these more handy and ready in building ordinary houses, and much more skilful in supplying the defects of instruments and materials than English artificers."

This pamphlet raised a storm of opposition among the more zealous sectaries, who called for a thorough rooting out of the whole Irish population of the three provinces.

But the policy advocated by Gookin prevailed. After much debate it was ordered that only landowners and those who had actually borne arms were to be transplanted. Landowners included not only landlords and all those, their heirs, who might become landlords, but those tenants who held leases for seven years or upwards. Among swordsmen, or those who had actually borne arms, were counted all militiamen, those who had kept watch and ward, even if pressed or forced, those who had mustered at rendezvous, even if they had never actually served in the field.

But as a matter of fact this last part of the order was never fully carried out, at least as a rule. Practically the vast majority of the lower orders were left on this side of the Shannon, though they were as a rule forbidden to dwell in any walled town—only forty-three were allowed to remain in Clonmel, only forty in Kilkenny, and these only to be licensed for a short period—and only landowners, their families and such of their tenants as chose to accompany them were forced to move into Connaught and Clare.

In fact after a time the policy of the government seems to have tended rather to prevent the mass of the peasantry from removing across the Shannon. At least we are told in an account of the Wexford barony of Forth, compiled after the Restoration, apparently for Sir William Petty, that the Cromwellians had not banished or transplanted the commonalty or plebeian natives in that barony in the hope that the expelled loyal gentle-

men being deprived of their servants and assisting dependents might be rendered "calamitous."[26]

There are two interesting points in connection with the Cromwellian settlement to be cleared up, namely, the numbers actually transplanted and what proportion the landowners transplanted bore to the total number of Catholic landowners.

Our sources of information are unfortunately deficient, and as usual contradictory.

First there are what are called the "Connaught Certificates." Each landowner, on transplanting, was to present to the authorities a certificate giving details as to himself, those who were to accompany him, and what stock of cattle, &c. he possessed.

These certificates still exist for the five Munster counties east of the Shannon, and for eleven of the twelve counties of Leinster. The Ulster certificates are lost; but there can have been but few Ulster landowners transplanted, for, owing to the plantation under James I., most of that province belonged to Protestants who were dispensed from transplanting; and few of the Catholics could have come within those classes who were entitled to receive lands in Connaught.

For the Connaught and Clare landowners possibly no certificates were issued, as it was easy to find out particulars about them, on the spot; at any rate none have survived.

Some of these certificates are curious reading. I select the following from Prendergast:—

Sir Nicholas Comyn of Limerick was numb of one side of his body of a dead palsy, and was

[26] *Journal of the Kilkenny Arch. Soc.* Vol. 4 New Series, p. 72.

accompanied only by his lady Catherine Comyn aged 35, flaxen haired, middle height; and one maid servant Honor Ny Namara aged 20 years, brown hair, middle stature. He had no substance, but expected the benefit of his qualification.

Ignatius Stacpoole of Limerick, an orphan aged 11 years, flaxen hair, full face and low stature was accompanied only by his sister Catherine aged 8, flaxen hair, full face. They, too, had no substance to relieve themselves with, but desired the benefit of their claim before the Commissioners at Loughrea.

John and Mathew Hore of Dungarvan were accompanied by 128 persons, their children, servants and tenants and a great stock of cattle, sheep and horses.

The Lord Baron of Castleconnell had a wife, five young children, and thirteen servants or tenants. The Lord Burke, Baron of Brittas, had three cows, three horses, six hogs for his whole substance.

The Lord Viscount Ikerrin had sixteen acres of winter corn, four cows, twenty-four sheep, two swine, five garrans. Seventeen persons were to go with him. From Munster and Leinster 150,000 animals of all kinds were to transplant with their owners, as well as sixty-five geese, these latter from Co. Tipperary.

The total number of landowners who received certificates in Munster was 550. Of these 221 were from Tipperary and 168 from Limerick. For Cork only sixteen certificates are extant; but there must have been more, for there were many in Cork who did not join in the war until after 1642.

From Leinster (eleven counties) 523 landowners were transplanted. The total number of persons mentioned in the certificates is 17,886 for Munster, of whom 8,531 were from Tipperary and nearly 5,000 from Kerry; and from Leinster nearly 8,500. In all, then, there were 1,073 landlords and nearly 27,000 persons from these two provinces.[27]

But is is by no means certain that this number actually did transplant.

The certificates were filled up and handed in by July, 1654, at a time when it was still believed that the transplantation was to be universal. Tenants then gave in their names with their landlords; but it does not follow that they afterwards went off with them to Connaught.

And that even the gentry were not all transplanted appears from the Census of circa 1659, supposed to have been made by or for Sir William Petty. From this we find that in the Barony of Clanwilliam, in Tipperary, there were then fourteen or fifteen persons bearing Irish names, and described as "gent" amongst those whom the Census calls Tituladoes, and that there were four in the barony of Owney and Ara.[28]

This Census of 1659 is even more conclusive in

[27] These figures are given by Hardinge. But it is nearly certain that they are not complete. Thus he says that there was no transplantation from Wicklow. But the list in the Ormond MS. mentioned below gives four. Hardinge gives sixteen names from Co. Cork. The Ormond MSS. has about thirty, and the Index to the transplanters' certificates gives twenty-one. Hardinge gives sixty-six as the total number from Kerry; but the Index has ninety-six names from Kerry, of whom twenty-three were townsmen of Dingle, one of these being described as a mason and seven as merchants.

[28] Bonn states that in Tipperary among the "Tituladoes" there were sixty Irish, and in Carlow thirty in 1659. Some of these of course may have been Protestants.

the case of the mass of the population. The figures, as given in Hardinge's printed account of it, show for Munster out of 153,000 inhabitants only 14,000 English and for Leinster only 24,000 out of a total of 155,000. Even in Ulster out of a total of 104,000 the English and Scots combined only numbered 40,600. These figures are perhaps not altogether to be trusted, for it seems impossible to believe that the total population of Ulster in 1659 was so small, and that the total British population was only 86,000 out of a total for the whole island of but little over 500,000. But they show that the vast majority of the population east of the Shannon was not removed to Connaught.

As for the Ulster landowners the lists in the Ormond MS. to be mentioned presently only contain eighteen Ulster names. But these lists apparently are not complete, for they contain no O'Donnells, although it seems quite certain that the O'Donnell families of Newport and Westport in Co. Mayo were transplanted from Ulster at this period.[29]

As to the landlords in Connaught and Clare it is not true that they were left undisturbed as some writers appear to believe. They had to stand their trial like all others, and according to the amount of guilt or innocence established in their cases, lose all, or two-thirds or one-third of their lands. And it does not follow that they were not moved from their former estates. Some of them no doubt were allowed their proportions out of their former properties. Most of them, however, were moved

[29] The Transplanters' Certificates for Kerry have some names such as O'Sullivan and O'Lyne, not to be found in the Ormond MS.

to other parts of Connaught or Clare.[30] But, as they had not to take a long and toilsome journey across Ireland in winter before being able to get their cases tried, they were to a certain extent better off than the rest of the Irish.

The number of Connaught landowners was extremely large. As we have already seen, the land question in Connaught and Clare had been settled more or less on Irish lines under Elizabeth and James. Nearly all who claimed lands under Irish gavelkind had been made proprietors according to English law.

The Books of Survey and Distribution show that there were innumerable small landholders—almost a peasant proprietary west of the Shannon in 1641.[31]

And a large part of Connaught had remained undisturbed in that year, so that there must have been many landowners in the province who had taken no part in the rising until after November, 1642, and so were entitled to some part of their estates.

It is not true either that all Connaught and Clare were given to the Irish. It was provided that innocent Protestant owners of land west of the Shannon, might, if they liked, hand over their property to the government, and get in exchange lands east of the Shannon. But it does not appear that many, if any, took advantage of this. All Sligo and Leitrim and part of Mayo were distri-

[30] See the case of Patrick French of Monivea as given by Prendergast.

[31] This is totally opposed to Hardinge's view. He holds that, the population of Connaught being comparatively small, the number of landlords was also small. A glance at the Books of Survey and Distribution will correct this error.

buted among the Cromwellian settlers and no Irish proprietors allowed in them.

Of 5,000,000 English acres in Connaught and Clare about 1,200,000 belonged in 1641 to Protestants who either proved good affection to the parliament, or else redeemed their estates by payment of a fine, and so were not disturbed. Of the remaining 3,800,000 which were confiscated, over 2,000,000 acres were counted as valueless—unprofitable. There were over 1,620,000 acres of profitable land confiscated, and as we shall see only something over 1,100,000 of these were allotted to Catholics.[32] The remainder, about 460,000, was distributed among the new Cromwellian settlers.

Until recent years the Transplanters' Certificates were almost our only source of knowledge for details of the transplantation. But in Vol. 2 of the Report of the Historical MSS. Commission on the Ormonde Manuscripts[33] there is a most important document dealing with this point. This is a list, or rather two lists, purporting to give the names of all the transplanted persons, their place of origin, and the number of acres set out to each. There is also a statement that the total area so set

[32] Or allowing for an error in Petty's survey, there may have been 1,400,000 English acres set out to the transplanted. But a large number never actually received the land due to them. The Irish agents in 1664 said that 156,000 acres were still due to transplanted persons.

[33] Old Series. 1899.

There are two lists arranged alphabetically. The first takes up forty-nine pages with about 1,540 names. Some of these, however, occur more than once. The second has no names beginning with the first four letters of the alphabet. It has fourteen pages with about 450 names. Most of these are different from those in the first list; but some names are common to both.

out was 717,076 Irish acres or 1,162,544 English acres. It is signed by Thomas Eliot, Deputy Surveyor General; and therefore may be supposed to be a fairly accurate statement of what lands were adjudged to the transplanted Irish.

The number of names is somewhat short of 2000; and the amount of land assigned to individuals varies from 11,574 acres allotted to the Earl of Westmeath, and 8,919 to Sir R. Blake, to 2 acres assigned to Catherine Quirke of Galway, and 4 to Mary ny Connor alias Neilan, and Honora, Kathleen and Amy Neilan, daughters of Richard Neilan of Clare.

We cannot be sure how many of these 2000 persons received estates in fee-simple. Some may only have got leases under other transplanted persons; others were possibly only settled as tenants at will. But if we consider that at least 1,023 landowners were moved from Munster and Leinster and that the number of those falling into various categories entitled to lands was very small in Ulster, and for reasons of which we have already spoken, very large in Connaught, we may suppose that the greater number of these 2000 persons who received lands in Connaught got them, or rather were intended to get them, in fee-simple.[34] There are, however, difficulties in this view, which I shall mention in the next chapter.

The interesting questions next arise as to what

[34] It would appear that many claimants never received allotments. Of the names in the two lists a very large number are from Connaught.

A great difficulty is caused by the fact that only 580 grants to transplanted persons were made between 1675 and 1677 when their position was finally regularised; but see the next chapter.

proportion these 2000 or so of Catholic landowners who were assigned lands west of the Shannon bore to the total number of Catholic landowners in Ireland in 1641, and what was the total acreage possessed by the latter at that date.

Sir W. Petty has given certain figures which have been largely adopted by subsequent writers. According to him, the area of Ireland is ten million Irish acres. There is an underestimate here, due to an error that runs through all Petty's survey. It is, for us, in this connection a fortunate one, since the true area of Ireland, being a little over twenty million English acres, we have only to multiply Petty's figures by two to get fairly accurate results in English acres.

Multiplying in this way, we find that Petty estimates one-fourth of the island, *i.e.*, five million acres, as unprofitable. Of the remaining profitable area, over two-thirds, *i.e.*, ten million four hundred thousand English acres were held by Catholics, and four million six hundred thousand English acres by Protestants in 1641.[35] He then gives figures showing how the ten million profitable acres held by Catholics in 1641 were dealt with under the Acts of Settlement and Explanation, and arrives at the conclusion that the net result of the proceedings under the Commonwealth and at the Restoration was the transfer of over five and a half million English acres of profitable land from Catholic to Protestant hands, leaving over four and a half millions still in possession of Catholics.[36]

[35] *Political Anatomy.*

[36] Several difficulties arising out of Petty's figures are given in the footnotes of Hull's edition of the Economic Writings of Sir W. Petty.

As Petty carried out the whole work of survey under the Commonwealth, and had access to every available source of information, and was besides a painstaking investigator, one would at first sight accept his figures as accurate. A closer investigation, however, raises doubts. A curious light on his accuracy is thrown by his estimate of the number of Catholic freeholders in 1641. As printed in Hull's edition of the "Political Anatomy," we find first on p. 141: "The Claymants of Land or the number of Proprietors and number of Catholic Freeholders before the War was"—and then a space left blank. Twelve pages farther on the number is given as 3,000. Now, this, we know from other sources—sources accessible to Petty, and even probably officially used by him—to be untrue.

There is still extant a document printed in Hart's "Irish Landed Gentry when Cromwell came to Ireland," entitled, "Forfeiting Proprietors Listed"[37] made in 1657 by Christopher Gough. This list gives the names of Catholic landowners in 1641 for six counties of Leinster, two of Munster, six of Ulster, and one county and one barony of Connaught.[38] The total for these is somewhat over four thousand. Now, the six Ulster counties given include five out of the six "plantation counties," and the number of Catholic

[37] Page 247, and following.

[38] The Leinster counties are Dublin, Louth, Kildare, Longford, Kilkenny and Wexford, with a total of 1,815 proprietors, of whom 621 were in Wexford. Cork had over 1,000, and Kerry nearly 550. In the five "Plantation Counties, about 20 of the 291 names given are those of English or Scotch Protestants. The exact total is 4,121, but it is probable that some names figure more than once, and there were certainly some loyal Protestants who forfeited outside the Plantation Counties.

proprietors in these was only about 270. Among the counties omitted are Tipperary, Meath, Galway and Clare, where, for various reasons, there was a very considerable sub-division of property, so that we are warranted in assuming that, for the whole island, the number of Catholic landowners in 1641 was at least 8,000, and may have been as many as 10,000, or even 12,000. So that Petty's figure of 3,000 appears to be a mere guess, or rather a piece of special pleading. Therefore, one is inclined to regard all his figures with suspicion, a suspicion heightened when we find, according to the report of the Commissioners appointed in 1700 by the English House of Commons to investigate the forfeitures under William III., that the four thousand Catholics outlawed after the downfall of James II. had between them held only about 2,250,000 English acres. The amount of land in Catholic hands had certainly increased rather than diminished between the Restoration and the Revolution, so that it is hard to accept Petty's statement that the area finally left in Catholic hands after the Restoration was over four and a half million acres of profitable land.[39]

That Petty's figures are not to be blindly trusted appears, too, from other contemporary statements.[40]

[39] As far as one can make out, the estates of nearly all Catholics had been held to be forfeited, after the downfall of James II., but about one-fourth of the total had been "restored" in accordance with the articles of Limerick and Galway. Some proprietors also had been restored by special favours of the Crown. And some escaped through partial juries. Altogether perhaps about 600,000 English acres were thus restored.

[40] See notes to Mr. Philip Wilson's article on Ireland under Charles II. in *Studies in Irish History*, 1649—1773. Lord Clare (speech on the Union) gives the area transferred from Catholics to Protestants as 7,800,000 acres.

Finally, Mr. Hardinge, who had specially investigated the question of the forfeitures, and published the results of his labours in a paper read before the Royal Irish Academy in 1866, gives a totally different account of the area held by Catholics and Protestants, respectively, in 1641.[41] He gives figures for each county and province, of which the total per province is as follows :—

	Forfeited.	Unforfeited.
Ulster, ...	1,153,693	4,106,034
Leinster, ...	2,744,441	2,079,866
Munster, ...	3,912,055	2,003,507
Connaught, ...	3,198,269	980,708
Total, ...	11,008,458	9,170,115

Of the forfeited area, 7,701,972 English acres were profitable. This is 2,300,000 acres short of the figures given by Petty as the amount of profitable land held by Catholics in 1641.

It would appear probable, therefore, on the whole, that very few of the Catholic landowners were able to prove a sufficient amount of "innocence"—using the word in its Cromwellian sense—to entitle them to any lands at all in Connaught. Those who did not get such lands lost everything, and either sought their livelihood on the Continent or lingered in want at home expecting the restoration of the King which they fondly hoped would end all their troubles. As I have said, at least six thousand landowners, and probably a

41 Hardinge, *On Surveys, Confiscations, etc.*, consequent on the rising of 1641. *Trans. R. I. Acad.*, Vol. 24.

very much larger number, were thus deprived of their lands.

For instance, according to the certificates, only 550 landlords were transplanted from the five Munster counties, and of these only sixty-six were from Kerry. But in Kerry the estates of nearly 550 Catholic landowners were confiscated. There were over 400 Catholic landowners in the single barony of Carbery, in Co. Cork; and about 1,000 in the whole county. Yet according to the certificates only sixteen were transplanted; the rest lost everything (except those of Cork, Kinsale and Youghal who were dispensed from transplantation). It seems impossible to believe that the returns for these and some other counties are complete; but making every allowance for error it would appear that only about one landowner out of every five was awarded any lands in Connaught or Clare.

Mr. Gardiner has examined the only surviving records of the examinations held to prove "delinquency"—those of the precinct of Athlone. Taking the first and last twenty cases he finds that eleven were dead or had gone beyond the seas, and four had taken the English side. Of the remaining twenty-five only seven would have escaped with partial forfeiture of their property, the remaining eighteen, if not protected by a special clause in their surrenders, would have been liable to be hanged under the provisions of the Cromwellian Act of Settlement.[42]

[42] Gardiner: *History of the Commonwealth and Protectorate*, Chap. XLIV.

Thus the Cromwellian settlement meant the complete sweeping away of all Catholic landlords —old Irish, old English, new English—from all the counties east of the Shannon and from two of the six counties west of that river. But, it did not, as we have seen, involve the sweeping away of the mass of the inhabitants. These remained on, a despised but indispensable race, hewers of wood and drawers of water for their conquerors.

Such a clean sweep of the landowners of a whole country seems monstrous to us at the present day. But we must remember that the same generation had seen an almost equally clean sweep of the landlords from Bohemia, and from some of the Alpine provinces ruled by the Habsburgs, and that not so long before all Spain had applauded the expulsion from its shores of thousands of Catholic Christians, whose only crime was that in their veins was the taint real or alleged of Moorish blood.

The lands thus cleared of their owners were divided amongst two classes of colonists, adventurers and soldiers. The former, in 1642, had advanced to the government the sum of £360,000 for the purpose of putting down the Irish insurrection.

In return for this money they were promised by Act of Parliament an acre of land in Leinster for every 12*s.* advanced, or one in Munster for every 8*s.*, or one in Connaught for every 6*s.*, or one in Ulster for every 4*s.* to be given them out of the estates of the insurgent Irish, as soon as the country was conquered. It must not be supposed that these sums represent the value of Irish land at that period. But the venture or adventure

—hence the name Adventurers—was a speculation, a risky one, for the Irish might never be subdued, and, as it turned out, the speculators got no return for their money until about 1654 or 55 when half the forfeited lands in ten counties were divided among them. There were about 1,360 of these Adventurers, including Oliver Cromwell, who subscribed £600, John Hampden, who subscribed £1,000, and Oliver Cromwell's servant Elizabeth Austrey who adventured 200 pounds.

The greater part of the rest of the confiscated lands were distributed to the officers and soldiers —those who had landed with Cromwell in 1649, those who before that date had served for the Parliament in Leinster and Ulster, and those of the Munster Protestant forces who could show that they took part in bringing about the betrayal of Cork and the other garrisons to Cromwell in 1649. These men all received lands instead of their pay, which had been in arrears for years. Besides this the contractors and others, who had supplied the army with food and munitions and who had never been paid, were to receive lands instead of the million and three-quarter pounds due to them.

The lands were divided by lot among the soldiers and adventurers. For this purpose a survey of all the forfeited lands was made, accompanied by maps, the latter being the well-known Down Survey. Most of the Down Survey still exists and from it we can tell who were the owners of any particular piece of land in Ireland in 1641, for each parish map has annexed to it a list of all landowners in it in that year and the part of the parish each held is clearly marked on the map.

First lots were drawn to decide in which province each regiment should take its lands. Then the particular county was decided in like way, and the special baronies in it. Then each company received its portion by lot, and finally each individual received as much of the land thus assigned to his company as would wipe off the arrears of pay due to him. The rate for County Cork, for instance, was 1000 acres for every £800 due. But a thousand acres in the Kerry mountains were only valued at £250, while in the Golden Vale of Tipperary they were valued at £1,100. Lands in Dublin were valued at £1,500, and in Kildare and Meath at £1,300 per thousand acres. Such lands as were over after satisfying the adventurers and soldiers were given to eminent friends of the republican cause in parliament and in particular to the regicides, *i.e.*, those persons who had sentenced Charles I. to death. They were seventy in number and got about 120,000 acres of some of the best lands in Ireland.

To sum up. There are in Ireland twenty millions of English acres. Of these nine millions were left to the former owners, Protestants who had either proved Good Affection to the parliament, or had redeemed their estates by fines.[43]

The remaining eleven millions were confiscated. Of these about half a million belonged to loyalist

[43] These nine million acres comprised first the great estates of certain of the old Irish or old English lords who had become Protestants such as the Earls of Thomond and Barrymore and the Lord of Kerry (Lord Lansdowne's ancestor) and secondly the greater part of the lands confiscated or purchased under the Tudors and James I. We may perhaps estimate the total area of those confiscations at something under 8,000,000 acres.

Protestants such as Lords Ormond, Inchiquin and Roscommon. The other ten and a half millions belonged in 1641 to Catholics. But of these about three millions were unprofitable lands, *i.e.*, mountain, bog, copse wood, so that in 1641 the Catholics in Ireland owned about seven and a half million acres of good land.[44]

Of this land we have seen that over eleven hundred thousand English acres of profitable lands were assigned in Connaught and Clare to certain comparatively "innocent" Catholics instead of their former estates. They also got the unprofitable lands adjoining or intermixed with the profitable ones they received.

Therefore about six and a half million acres of profitable land were divided up among the Cromwellians.

What were the results of this great transfer of property? Thirty-four thousand of the most vigorous of the Irish took service on the Continent, in Spain and other Catholic lands. The merchants who had made Galway the second port in the British Islands, and those who had for long been the source of the prosperity of Waterford and Kilkenny settled in France or in the Spanish dominions.

Many of their descendants flourished exceedingly in the wide lands where the Spanish flag flew.

Those of Waterford, at the Restoration, peti-

[44] This is Hardinge's estimate, which quite disagrees with Petty, who assigns to the Catholics in 1641 two-thirds of the profitable lands in Ireland. Dr. Bonn follows Petty. But Hardinge declares that he made his estimate from the actual figures in the Books of Survey and Distribution, and the Down Survey.

tioned from Ostend, St. Malo, Cadiz and other places, even from far-off Mexico, to say that God had blessed their efforts while in exile and that they had gained considerable wealth by trade, and therefore hoped to be allowed to return home.

Of those landowners who had lost all, some were restored at the Restoration to their ancient estates. So too were some of those who had received lands in Connaught. The remainder of these stayed on in Connaught where their descendants hold to the present day the estates to which they were transplanted. But in the stress of the penal days in the 18th century many of them became Protestants.

Of the new settlers scarcely six of the adventurers founded families. Some forty years after the transplantation many of the children of Cromwell's soldiers could not speak a word of English. The private soldiers who received small grants of land sold them for trifling sums to their officers or to others. Dr. Petty, the surveyor, bought up great tracts of country in this way at very cheap prices. If they remained in Ireland they very generally married Irish women—though this was forbidden under very stringent penalties, and these women generally brought up their children as Catholics. Thus the projected plantation in great measure failed. There are said to be some parts of the country, notably Tipperary, which are almost entirely Catholic, though the names and often the appearance of the people clearly show that they are descended from Cromwell's Roundheads.[45]

[45] There is however but little foundation for the theory that the population of Tipperary is to a large measure of Cromwellian descent. According to the Census of 1659 there were then in the whole county 24,760 Irish and only 1,924 English.

The officers on the other hand bought up the soldiers' allotments, and also in many cases the lands assigned to the transplanted Irish in Connaught. They founded families many of which last to the present day.

And one result of the confiscation, a result which the present generation is seeing reversed by means of costly machinery and after generations of discord, was the almost complete disappearance from the island of a peasant proprietary.

CHAPTER VI

THE RESTORATION SETTLEMENT

THE restoration of the Monarchy seemed to promise to the ever optimistic Irish the restoration of their lands.[1]

Of the three kingdoms ruled by Charles I. Ireland had the best record for loyalty. Scotland had begun the armed opposition to his rule, and had persisted in it until his execution had shocked the kingdom back to its allegiance to his son—an allegiance grudgingly rendered, and hampered round with conditions. And a couple of decisive victories had brought almost the whole nation to submission to the usurping English government.

The majority of the English nation had revolted from its allegiance, and they were Englishmen who had cut off the head of the father, and put a price on the head of the son.

But the Irish, who encouraged by the example of the Scots had taken up arms in 1641 to redress their grievances, had always protested their loyalty to the King. They had taken steps to come to an agreement with him in 1643, and in

[1] For the general history of the period Carte's *Ormond* gives on the whole the fullest account. Prendergast's *Ireland from the Restoration to the Revolution* has many instructive details. Bagwell gives a very inadequate account of the Acts of Settlement and Explanation. Wilson's *Ireland under Charles II.* is a useful essay.

1648 and 1649 a solemn treaty had reconciled the majority of the nation with their sovereign.[2]

When that sovereign had perished on the scaffold the whole body of the Catholics of Ireland had rallied to the defence of his son. For over four years they had maintained his cause, and had only laid down their arms when all hope of success had vanished, and the greater part of the population had perished.

The vengeance which the triumphant English Republican Party had taken has been set out in the last chapter.

Everything then led the Irish to look upon the restoration of the King as full of promise for themselves.

At the outset these hopes were to a certain extent realised.[3] Those who had followed the King into exile on the Continent were enabled to return. The landowners who had been confined to the west of the Shannon were now permitted to reside without restriction anywhere within the island. A large number of dispossessed landowners obtained letters from the King ordering the immediate restoration of their estates; and in some cases, where these estates had not actually been set out to any Cromwellian soldier or adventurer, they obtained possession; in other cases the intruder was willing to hand over the property in return for payment.

[2] The first peace had been signed in 1646 but was rejected by the majority of the Irish. Late in 1648 peace terms were finally agreed on, and the peace was proclaimed in January, 1649, shortly before the execution of the King.

[3] Ireland is not mentioned in the Declaration from Breda. By it all past offences were to be forgotten, and it might be argued that this oblivion would extend to the proceedings of 1641 and the following years.

Whether Charles ever really intended to keep faith with the Irish can never be ascertained. The Protestant leaders, Coote, Orrery and others, implacable enemies of the Irish, had made it a condition in negotiating with the King for his restoration, that they should keep the lands they had acquired in Ireland.

The King, from Breda in April 1660, promised this, thus giving, as Lord Chancellor Eustace wrote to Ormond, the estates of those who had fought for him to those who had fought against him.[4]

In November 1660 the King published a Declaration for the Settlement of Ireland. The gist of this document was that the Cromwellians were to keep what they had got; that a new class of Protestants was to be provided for out of Irish land, namely Royalist Protestant officers who had served the King before June 5th, 1649[5]; and that those Irish who had been deprived of their lands merely on the score of their religion or of their attachment to the King, as well as those who were entitled to the benefits of the peaces of 1648 and 1649 were to be restored to what they had lost.

The only drawback to a settlement on these lines was, as Ormond cynically pointed out, that it would be necessary to discover a new Ireland, for the old would not serve to satisfy these engagements.[6]

According to the King's declaration three

[4] Prendergast. *Ireland from the Restoration to the Revolution*, p. 15.

[5] There is no mention of religion in Clause IX. of the Declaration. But in the "Instructions" embodied in the Act of Settlement it is specified that Protestant officers are meant.

[6] Carte.

classes of Irish landowners were particularly entitled to redress. The first were those who had never resisted the authority of Charles I. or his son, but who had been expelled from Ireland or deprived of all or some of their property on account of their noted loyalty, or because, being Catholics, they had failed to show "Constant Good Affection" to the parliament.

In the first sub-division were included great noblemen such as Ormond and Clanrickard; in the second sub-division were the townsmen of Dublin, Drogheda (if any of these survived), Cork, Kinsale and Youghal, infants (such as the Brownes and Mac Carthys of Killarney) and many isolated landowners in all parts of the country.

Then there were those who, although they had joined in the rising of 1641, or in the subsequent Confederation of Kilkenny, had yet singularly deserved of the King by their efforts to bring about a reconciliation between him and his Catholic subjects, or by the zeal with which they had fought under his banners against the usurper. Men such as Lord Muskerry and the Marquis of Antrim may be taken as examples of the former; the citizens of Limerick, Wexford and Galway as examples of the latter.[7]

And to all of these—the vast majority of the nation—Charles was bound by two solemn treaties, by which first his father, and then he himself had fully pardoned those who had taken part in the

[7] The townsmen of Wexford had fought valiantly against Cromwell; those of Limerick had rejected an offer of very favourable terms from Cromwell himself, and had stood a siege from June to October, 1651. Galway was the last town in his dominions to hold out for Charles and only surrendered after a siege of nine months.

rising of 1641, received them once again into favour and protection, reversed all outlawries and attainders, and confirmed them in their estates.

And the third class, a section of those secured by treaty, had even a stronger claim. These were the "Ensignmen," those who refusing to accept the republic, or falling within the classes excluded from pardon by the Cromwellian government, had followed the royal ensigns on the continent of Europe. The shifty Lord of Inchiquin among the Protestants, and innumerable Catholics were in this class.

All these Charles was bound in honour, in justice, and by a solemn treaty, to restore; and all these he did in his Declaration explicitly promise to restore to their inheritance. At first Charles seems to have had some intention to abide by his word. Large numbers of royal letters are extant ordering the restoration of individuals such as Darcy of Plattin, and Talbot of Malahide, or of whole classes such as the citizens of Cork, and Galway.[8]

But the Cromwellians in possession, equally protected by the King's declaration, held on to what they had got. Only in those few cases where no soldier or adventurer was in possession did these "letterees," as they were called, obtain any benefit from the King's letters.

To carry out the Declaration thirty-six Com-

[8] In August, 1660, the King ordered the restoration of the inhabitants of Cork. In March, 1661, nothing had been done. In July, 1661, the King's orders had not yet been carried out. By the Act of Settlement these inhabitants had first to obtain decrees of Innocence before restoration. Many of them never recovered their property, though their loyalty was unquestioned.

missioners were named. They began their work in March 1661. They were all in possession of lands taken from the Irish; hence they can hardly have inspired the latter with much confidence. They seem to have done little or nothing to carry out the King's intentions; in fact "their partiality and corruption" to use his own words, "had discredited the Declaration itself."[9]

It became evident that an Act of Parliament alone could bring about some form of settlement.

Writs were accordingly issued for the election of an Irish Parliament. One of its first tasks, and its greatest, was to deal with the land. As the only freeholders, except in four counties beyond the Shannon, were Protestants, and as all Catholics had been cleared from the corporate towns, only one Catholic was elected to the House of Commons,[10] and he was not allowed to take his seat.

From the House of Lords the old nobility were practically all excluded, on the plea that they had been attainted and outlawed in 1641 and 1642, and that these attainders had not yet been formally reversed. It was true that the treaties of 1648 and 1649 had provided for the reversal of these attainders; and that most of these peers had

[9] Carte: letter from Charles II. to Ormond *re* proceedings of the House of Commons with regard to the trials of innocents in 1663.

There were difficulties in the way of the Commissioners, as the King's Declaration had not the force of law. But they took care to distribute lands amongst themselves and their friends as reprisals in case they might have to restore any of the Irish.

[10] Carte says that no Catholic and but few "fanaticks" were returned. Orrery says "there sat this day (May 8th, 1661) but one Papist Peer." He also says that one Papist and one Anabaptist were chosen for the House of Commons.

since given distinguished proofs of their loyalty. Protestant clamour however proved too strong and only a few Catholic peers were able to take their seats.[11]

From a parliament thus composed the Irish had little to hope. But in conformity with Poyning's Law the Act in its main features was to be settled in London by the Privy Council; and here the Irish hoped to obtain a favourable hearing

Unfortunately for them if justice was on their side, force was on the side of their opponents. It soon became plain that one or the other interest must be sacrificed; the question was who? The Catholics pleaded solemn treaties, the plighted word of two Kings, their eminent services and sufferings. The Protestants were armed; they held all the garrisons; and all the administrative posts. They threatened an appeal to the sword.

The Irish, too, were unfortunate in their advocates, Sir Nicholas Plunkett and others, men more convinced of the justice of their cause than of the need of tact to overcome the prejudices against it.

Ormond, writing to Eustace, says that he "fears the liberty allowed to the Irish to speak for themselves will turn to their prejudice by the unskilful use they make of it, in justifying themselves, instructing the King and his Council in what is good for them, and recriminating of others."[12]

Carte expatiates at considerable length on the want of prudence on the part of the Irish in presenting their claims, and contrasts it with the

[11] Later on some at least of the Catholic peers seem to have been readmitted, but at what date is not clear.

[12] Quoted by Carte. Vol. II., p. 233.

skill with which their opponents managed their business.[13]

These opponents too had all the advantages that money confers. From twenty to thirty thousand pounds was judiciously laid out in bribes in England: the impoverished Catholics could not employ this weapon.

The great Catholic lords such as Muskerry, Clanrickard and Antrim, who were in close touch with the King and secure of restitution gave no help.[14] The Duke of York and Clarendon were openly hostile. Ormond—the unkind deserter of his loyal friends—secured every possible benefit for himself; but in spite of the eulogies of Carte it is plain that he left the greater part of those whom he had deluded into fighting under his banners to starve. The "new interest" in Ireland was implacable in its hostility.[15]

As to English feeling it was entirely against the Irish. Wild tales of the atrocities at the outbreak of the rising were circulated and believed. According to Carte the new interest succeeded by the pretended discovery of sham plots in exciting a widespread feeling in England of the danger of any concessions. Clarendon declared that all parties in that country were "united and agreed in one unhappy extreme, that is their implacable malice to the Irish, in so much as they concurred in their

[13] Carte, pp. 241—2.

[14] Muskerry, created Earl of Clancarthy not only recovered his own estates, but also obtained most of those of his kinsmen and dependants who had reluctantly followed him when he joined in the rising of 1641. The plea was that these estates were held from him. Amongst others he got the estates of some thirty of the clan of O'Leary.

[15] See *Cal. St. Paps.*, 1660—62, p. 173, for the Remonstrances and Addresses of the King's Protestant subjects.

desire that they might gain nothing by the King's return."[16]

As for the King himself—good easy-going man—he had one fixed principle, a determination not to set out again on his travels. He personally attended most of the deliberations of the Privy Council; but he soon wearied of the interminable discussions. The balance began to turn decidedly against the Irish.

And it must be admitted that the Protestants, rebels though they had been, had some powerful arguments to use. They had recalled the King without, as far as was publicly known, demanding from him any conditions. They could point out that the interests of England seemed to demand that the Irish should be kept permanently in the powerless state to which Cromwell had reduced them. And they could point out that the Irish in defending the royal cause were urged not so much by loyalty as by self-interest. What they had aimed at, it was said, was the complete triumph of Catholicism, and it was only necessity which had made them unite with the King against the common enemy the Parliament of England.

Chance placed an important weapon in their hands. The Protestant agents were able to produce at the Council Board an original copy of the instructions issued by the Supreme Council of the

[16] Quoted by Wilson, *op. cit.*
Curry gives a fuller quotation, "but be kept with the same rigour and under the same incapacity to do hurt, which they were under. And though eradication was too foul a word to be uttered in the hearing of a Christian prince, yet it was little less or better that they proposed in other words and hoped to obtain. Whereas the King thought that miserable people to be as worthy of his favor as most of the other party." (*Civil Wars*).

Confederates early in 1648 to the Bishop of Ferns and Sir Nicholas Plunkett who were being sent on a mission to the Pope. In this the Pope was asked to be mediator between the Irish and Queen Henrietta Maria, then in France, and the Prince now Charles II. This seems a sufficiently harmless mission, but there was a further instruction that if all else failed the Pope was to be asked to act as Protector of Ireland. This document was signed by Plunkett himself. At the same time were produced drafts, in Plunkett's handwriting, of instructions to envoys to Spain and France similarly asking for mediation, and in the last resort protection.[17] At the time the Queen and probably also the Prince must have been aware of these steps, and certainly they were taken as much in their interest as in that of the Irish. But technically the Irish were in the wrong. Charles professed the greatest indignation. Plunkett was debarred from all access to the King and Court, and the Privy Council on March 14th, 1661—2, decided that no further hearing was to be given to any petitions or remonstrances from the Irish.

The main provisions of the Bill for the Settlement of Ireland were then settled by the Privy Council and transmitted to Ireland, and, in May, 1662, passed by both houses.

The victory of the Protestant party is fully apparent in the preamble to the Act of Settlement, which is such a remarkable presentation of the Protestant case that the more material parts deserve quotation in full.

[17] Cox: *Hibernia Anglicana* gives the text of the Instructions, and the order of the Privy Council.

This preamble begins :—

" Whereas an unnatural insurrection did break forth against your Majestie's royal father of ever blessed memorie, his crown and dignitie, in this your Majestie's kingdom of Ireland, upon the 23 of October, in the year of our Lord God 1641 and manifest itself by the murther and destructions of many thousands of your said Majestie's good and loyal subjects; which afterwards universally spreading and diffusing itself over the whole kingdom, settled into and became a formed and allmost national rebellion of the Irish papists . . . the which Irish papists . . . did first assume, usurp and exercise the power of life and death, make peace and war, levie and coin money, and many other acts of sovereign authoritie, treating with forreign princes and potentates for their government and protection, and afterwards acted under a forreign authoritie . . . and whereas Almightie God hath given your Majestie, by and through your said English and Protestant subjects, absolute victorie and conquest over the said Irish popish rebels and enemies, so as they, their lives, liberties and estates are now wholly at your Majestie's disposition by the laws of this kingdom : and whereas several of your Majestie's subjects, by whom, as instruments, the said rebels were totally subdued, did in the time of your Majestie's absence beyond the seas, for supplie of the then pressing necessities, and to prevent the further desolation of this your Majestie's kingdom, enquire into the authors, contrivers and abettors of the said rebellion and war, and after much deliberation among themselves, and advice

from others had thereupon, did dispossess such of the said popish Irish rebels of their lands, tenements and hereditaments, as they found guiltie of, and to have been engaged in the said rebellion or war aforementioned, and did withal distribute and set out the said lands to be possessed by sundrie persons, etc., etc.

"And forasmuch as the rapines, depredations and massacres committed by the said Irish and popish rebels and enemies are not only well known to this present parliament, but are notorious to the whole world; and lastly, for that the said rebels, since their throwing off your royal Father's and your Majestie's government, are become subdued and conquered enemies, and have justly forfeited all their rights, titles and estates in this kingdom; it is therefore enacted . . . that all honors, mannors, houses, places, lands, tenements and hereditaments . . . in this kingdom, which at any time from and after the said 23rd day of October, in the year of our Lord 1641 were seized or sequestered into the hands or to the use of his late Majestie . . . or which were otherwise disposed of to any person for adventures arrears, or whereof the adventurers, officers, or soldiers or any transplanted persons or any other person or persons whatsoever, upon account of the said rebellion or war, were in seizin, possession or occupation by themselves, their tenants, etc. on May 7th, 1659, or which were given out or set apart to anyone in consideration of money or provisions advanced, etc., etc.

"Are and shall be, and are hereby declared, deemed and adjudged, as from the said 23rd day

of October, 1641, forfeited . . . and they hereby are from the said 23rd day of October vested and settled in the real and actual possession and seizin of your Majestie, your heires and successors, without any office or inquisition thereof found, or hereafter to be found, notwithstanding that the persons who were the former proprietors, or reputed proprietors of the said estates, or anie of them, are not hereby, or have not been heretofore attainted for and by reason of the said most hainous and unnatural rebellion and war."

In other words the fact that the Cromwellians had dispossessed anyone of his estate was to be taken as proof that the dispossessed one was a rebel, and was to vest his estate in the Crown.

Yet, in spite of this unpromising preamble, the Act itself, in appearance at least, was not so very unfavourable to the Irish. From the vesting clauses were excepted the estates of all innocent Protestants and Papists, and that irrespective of whether they had recognised the usurping government and sued out decrees in Connaught and Clare. They were to be restored to all their former estates.[18]

Further the Act confirmed to the Irish the benefits of the peace of 1648. But here a distinction was made. Such of them as had taken lands west of the Shannon in lieu of a proportion of their former properties were to keep the lands thus acquired, and to forfeit all claim to their original properties. But those of them who had never

[18] This part of the Act has often been wrongly quoted as if it extended only to those innocents who had never taken lands from the Commonwealth.

sued out decrees for such lands were to be restored to what they had been deprived of. And one class was specially mentioned as deserving of favour; those namely who had followed the King's ensigns abroad. Some 220 of this class are mentioned by name. Among them were Lord Magennis of Iveagh, Lord Castleconnell, Colonel Charles Mac Carthy Reagh, Captain Hugh O'Conor Don of Ballintubber, and a number of others who had been notoriously participators in the rising of 1641.

Then too any transplanted Irish not in the foregoing class who had received lands were to be confirmed in them. Finally there was a list of persons specially deserving of the King's favour, Nominees as they were called, including four earls, eight viscounts, six barons and twenty other persons of position.[19]

Furthermore there were various provisoes in the Act for the restoration or security of certain favoured individuals,[20] and a second list of "Nominees" eighteen in number to be restored on account of their eminent sufferings as opponents of the Papal Nuncio Rinuccini.

Now in one or other of these various categories by far the greater number of Irish landowners must have been included. Nearly the whole nation

[19] Amongst them were two, Lord Strabane and Sir G. Hamilton, who, though Catholics, were sons of one of King James' Ulster settlers.

[20] Such as Lords Castlehaven, Carlingford, and Dillon, Colonel John Fitzpatrick of Castletown, Sir Connell Farrell, Henry O'Neill of Killileagh, Daniel O'Neill, Purcell of Loughmoe. Altogether there were about fifteen so named. Some of them were in the list of the thirty-eight nominees, others were named among the Ensignmen: some were to be restored before the Cromwellian in possession was reprised, others after.

had ultimately accepted the peace of 1648.[21] Such of them as had not explicitly done so had in many cases served the King abroad, and so might claim restoration as ensignmen.

Of the original movers in the rising of 1641 a very large number had surrendered to the Cromwellian government on articles which entitled them to a proportion of their estates west of the Shannon. In particular those Irish of the Leinster army who had laid down their arms in May, 1652, at Kilkenny, and who had ultimately been ordered one-third of their former estates in Connaught, included most of those lords of the Pale who had been foremost in the confederacy with the Ulster Irish in 1641.

Even the son of Lord Gormanston, the leader on whose head a price had been set in 1641, was one of the Nominees specially mentioned as to be restored.

As some thirty thousand Irish had taken service abroad, most of them under the King's ensigns, the restoration of the "Ensignmen" would have meant the restoration in addition to those specially named, of a very large number of landowners. But, as was soon apparent, the benefit which the Irish were to reap from the Act was dependent on *how* the Act was carried out, or rather on whether it was possible to carry it out at all. And it was soon apparent, as must have been known all along to Orrery and others, that it was quite impossible to carry it out if the adventurers and soldiers were to keep possession of what they had got. This

[21] The chief exception was Owen Roe O'Neill with his followers, who had violently opposed the peace. But before his death he had come to terms with Ormond in Oct. 1649

was provided for by Clauses VI. and VII. of the Act. They were to keep whatever they were in possession of on May 7th, 1659, and furthermore all the corporate towns, certain counties, and other lands were set apart to pay the arrears of the "forty-nine" officers as those Protestants who had served the King as officers before 1649 were called.

As to the restoration of the Irish, it was provided that "innocent Protestants" and "innocent Papists" were to be immediately restored, and that in restoring them those who had taken no lands in Connaught or Clare were to have precedence over those who had taken such lands. Adventurers and soldiers as well as transplanted persons removed to make way for such "innocents" were to be reprised, that is to get lands of equivalent value immediately after removal.[22]

But the remainder of the restorable Irish were to get back their lands only *after* the Cromwellian in possession should be reprised. This was the fundamental condition, which wrecked the whole scheme. For, in spite of what had been represented to the King, there was no stock of land available out of which sufficient reprisals could be made. And what little there was was reduced by the most appalling jobbery and corruption. Thus James Duke of York was granted all the lands that had been set out to the regicides, computed at 120,000 acres,[23] largely made up of some of the best lands in Tipperary and elsewhere. Some of the estates thus given to him had actually belonged to

[22] Transplanted persons were not to be removed to make way for innocents until they had first got a reprise: Clause XXVIII. of Declaration.

[23] This is Petty's figure.

men who had served under him abroad. It does not appear that he ever took any steps to compensate these unfortunates.

Then the Secretary of State, Bennet, afterwards Lord Arlington, was given—apparently by the consent of the agents of both parties anxious to secure his favour[24]—the lands of Lord Clanmaliere, the two baronies of Upper Phillipstown and Portnahinch amounting to over 60,000 English acres. The Earl of Leicester, nominal Lord Lieutenant of Ireland in 1641 was allowed arrears to the amount of £50,000 to be satisfied out of the corporate towns, although he had never set foot in Ireland.

Thus in practice only the Innocents, and those whose lands were not in actual possession of adventurers or soldiers had any real prospect of restoration, except by special favour.

The Act also provided that no innocent Papist, no matter how eminent his loyalty, was to be restored to any property within the walls of any corporate town, so that these might forever remain strongholds of the English interest. This hit with special severity the inhabitants of the five towns Dublin, Drogheda, Cork, Youghal and Kinsale, who had never swerved from their allegiance.[25]

[24] We find Colonel Talbot, one of the Irish agents, Colonel Vernon representing the Cromwellian interest, and Winston Churchill, one of the seven Commissioners, all active in Bennet's interest.

[25] We learn from Sir Heneage Finch that the inhabitants of Dublin and Drogheda were, under Clause CLXXXII., to be restored even to their property inside the walls. Those of Kinsale and Youghal got a general letter from the King ordering their restoration. (*Cal. St. Paps.*, 1663, p. 188). But the Irish government objected, and suspended the execution of the King's commands in many cases; perhaps with regard to these two towns also. (*Ibid*, p. 188).

It was provided that the townsmen were to receive compensation as near to the towns as possible, and furthermore that the King could by letter, restore any individual to his property within a corporate town if he desired. To his credit it would seem that Charles took advantage of this clause to restore a very large number of townsmen, although his efforts in this respect were thwarted as far as possible by the Dublin authorities.

The Books of Survey and Distribution show that the chief of the old inhabitants of Cork and Kinsale recovered the lands which they had held in and round the liberties of these towns. But the grant to the Earl of Leicester shows that the poorer citizens of Cork, at any rate, lost their houses within the walls. It is doubtful if they ever got reprisals elsewhere.[26] Even in the case of a Cork family of wealth and influence, the Sarsfields of Sarsfield's Court, the Cromwellian in possession managed to hold his ground until 1681.[27]

To carry out the Act a Court of Claims was set up. The members, seven in number, were all Englishmen, but apparently were unconnected with any of the English interest in Ireland.

[26] The forfeited lands in the baronies of Barrymore and Muskerry were set aside by Clause XVII. of the Instructions in Act to reprise such of the inhabitants of Cork, Youghal and Kinsale as were not restored to their property within the walls. But Clause CCVII. granted to Lord Muskerry all forfeited lands in Muskerry not in possession of Adventurers or soldiers, and as most of the proprietors held from his father the Earl of Clancarthy the forfeitures fell to him not to the Crown. Similarly in Barrymore the Earl of Barrymore, who was a Protestant, owned most of the barony. So the provision for the dispossessed townspeople can have been of little benefit to them.

[27] This I have from a descendant of the Cromwellian grantee Surgeon-General G. J. H. Evatt Junior United Service Club

They opened their court on September 20th, 1662; but did not begin to hear claims until January 13th, 1663. The preceding months appear to have been spent in settling their procedure and in other formal matters.

This delay had fatal results for the Irish. The "Instructions" embodied in the Act of Settlement had specified certain dates before which the various restorable and reprisable classes were to have their claims satisfied. As the Act, though passed in May, did not obtain the Royal Assent until September, the dates first specified could not be adhered to, and they were extended. These clauses were inserted apparently to secure the speedy restoration of the interested parties.[28] But, as interpreted by the lawyers, they proved the undoing of most of them. Innocents for instance were to have their claims heard and determined before August 21st, 1663—twelve lunar months after the opening of the Court; and when that date was reached the Court held that they had no power to hear any further claims.

Five precious months of the twelve had been wasted, and there were thousands waiting to be heard.

Rigorous conditions had been laid down which it was hoped would make it impossible for the vast majority of Catholics to obtain restoration as "innocents." For instance the condition that to have enjoyed an estate in the rebel's quarters was a bar to innocence would have excluded Lady Thurles, Ormond's mother, whose devotion to the

[28] See the statement quoted later on: it is in *Cal. St. Paps.*, 1669—70, and addenda.

English cause had been acknowledged by the chief Parliamentary officers. The Lord Fitzwilliam of Merrion was decreed "nocent" because he had written a letter from Paris to the Confederate authorities "altogether for our service," as Charles himself said.[29] He had never done anything against the English interest and had in fact only been in Ireland for a short period between 1645 and '47, and then on the King's service. Cromwell had allowed him to return in or about 1655, and had allowed him part of his estate.[30]

Lord Dunsany in March, 1642, had written to Ormond an abject letter totally disclaiming all sympathy with the proceedings of the Lords of the Pale. He had never "corresponded with their councils, meetings, parleys or camps, other than two letters which were sent to the Lords Justices." He declared he was an Englishman born, the eleventh of his family, none of whom ever had been disloyal, four of them killed in the behalf of the Crown of England, the rest all wounded except himself and his father, "having no occasion to be put to the same." He was firm in his resolve "rather to be hanged with the imagination that I died a loyal subject and a lover of the prosperity of England, than to live in the quiet possession of all the north of Ireland."[31] He had escaped to the English quarters as soon as he could. But this had not saved his estate from Cromwell and now he was decreed "nocent" for having lived for a time in the Irish quarters.[32]

[29] *Cal. St. Paps.*, 1669—70, addenda 1664, p. 491.
[30] Elrington Ball. *Hist. of the Co. Dublin.*
[31] Quoted by Prendergast, p. 256.
[32] *Cal. St. Paps.*, 1663, p. 237.

Sir Thomas Sherlock who had sided with the English in the early days of the rising had been forced to surrender his castle to the Irish forces, and had been imprisoned by them. He signed the roll of Association of the Confederates to obtain his release; then escaped to Dublin and had been allowed in 1647 by Jones to reside in England. But having signed the roll he could not claim innocence.[33]

In one way or another all avenues towards innocence seemed securely barred. And it was further provided that no one could be restored as innocent to any lands which he claimed through a nocent predecessor in title. But luckily for many of the Irish the framers of this clause forgot that the issue of a tenant for life were held to claim not from their father but from the original donor. In this way the heir of Rory or Roger More of Balyna, the prime contriver of the whole insurrection, actually recovered his estate.

Then, too, although the would be innocent had to appear as plaintiff, the interested Cromwellian had to produce proofs of his guilt before he could be declared nocent. So where there was no Cromwellian in possession the case often went by default; and in any case proof of events which had happened twenty years ago was not

[33] Prendergast. So Henry O'Neill of Killileagh had lived with his mother in the Irish quarters being only fourteen years of age in 1641. He went to England and served the King before he came of age, and then served under Ormond in Ireland. His estate had been seized by Cromwell, and was in possession of Lord Massereene. Having lived in the Irish quarters debarred him from restoration as an innocent. *Cal. St. Paps.*, 1666—69, p. 233.

always easy. Sometimes, also, hostile witnesses could be bribed not to appear, or the Cromwellian in possession could be bought out on easy terms.

So, contrary to the expectations of the Protestant interest, of those whose claims were heard during the first three months after the Court opened the vast majority were restored to their estates.

Of course clamour at once arose.[34] Already in February the Irish House of Commons had passed a resolution condemning the procedure of the Commissioners and virtually charging them with a design to destroy the English Protestant interest. This only brought down on them a severe rebuke from the King.[35]

So they fell back on another resource, an appeal to arms. A plot to seize the Castle and overturn the government was hatched by the extreme Cromwellians. The Covenant was again to be set up and the Protestants secured in their lands. The conspiracy was discovered and three of the ringleaders were duly hanged. But they did not die in vain. Already, before their execution, the government had begun to yield, and were considering a new Bill designed to amend in the Protestant interest the Act for the Settlement of Ireland.

The main objections to this Bill are to be found in a memorial from the Commissioners for the execution of the Act of Settlement themselves.[36]

[34] Coventry, one of the Commissioners, says they were abused for having restored one or two hundred innocents, "an Act of justice, and therefore an unheard of crime in this land." *Cal. St. Paps.*, 1663, p. 11. This has a curiously modern ring.

[35] *Cal. St. Paps.*, pp. 32 and 33. The King to the Commissioners and to the Lord Lieutenant.

[36] *Reports on Public Records, Ireland*, Vol. 1821—25, p. 653

Englishmen and Protestants as they were, yet once put in a judicial position the tendency implanted in the Englishman's mind which makes even the most partisan of advocates incline to subordinate his own prejudices to the demands of law, led them to point out that the new Bill proposed to take away (1) the estates of all innocent papists yet unheard, (2) of those transplanted, (3) of the ensignmen, (4) of those claiming the articles of peace, (5) the power given to the King of restoring papists to houses and lands in corporations.[37]

They had applied for an Act to extend the time during which they could carry out the provisions of the Act; instead of which the Bill now under consideration was transmitted.

The time limited for hearing the claims of innocents expired on August 21st, 1663, and the great question for the Irish was would it be extended.

During the seven preceding months 820 cases had been heard.[38] In about 112 of these the verdict had been "*nocent*," thus leaving 708 cases in which either a decree of innocence was issued, or the plaintiff left to the ordinary law courts.[39]

[37] It was said that three of the Commissioners—Churchill, Rainsford and Beverley were for the King, three for the English interest and one—Allan Broderick—for himself. (*Cal. St. Paps.*, 1663—65, p. 231). The document cited above was read on November 30th, 1663, at the Privy Council. Other documents of a similar nature were delivered on December 9th, 1663.

[38] List in Appendix to 19th Report of the Deputy Keeper of the Public Rolls, 1887.

[39] Winston Churchill stated that owing to Coventry's absence in London the Commissioners were often evenly divided, and so cases dismissed for want of agreement, the parties, though never so innocent, without any visible remedy. *Cal. St. Paps.*, 1663, p. 48.

These decrees apparently included innocent Protestants, and the number of these, as we know from a statement of the Commissioners, was 168.

Therefore about 540 Catholics, at the outside, were decreed innocent.[40] It was notorious that there were numerous others whose claims had not been heard. The Commissioners themselves declared that they had heard the claims of all who had never taken lands west of the Shannon, and of one-sixth of those who had.[41] If this is accurate there can have been at the outside only 1,500 claimants unheard. But Prendergast cites cases of claimants unheard though they had taken no lands from Cromwell. The Irish said the number of those unheard was 8000. Sir Heneage Finch, ordered in 1670 to report to the King on the whole matter, declares that over 4000 had not been heard. The exact numbers therefore cannot be determined. Many of those unheard, too, were persons whose innocence would have been hard to prove, and who therefore had not been eager to press their claims.[42] But among them were numerous widows and orphans, persons without

[40] The surviving Rolls of Innocents, ten in number, have 492 names. One is missing. This would give about 540 in all, confirming the above estimate. Mr. Bagwell gives from the Egerton MSS. Innocent Papists 566, Innocent Protestants 141, Nocent 113; 820 in all.

[41] Document already cited. If we suppose that 2000 transplanted Irish received lands from Cromwell, probably an excessive estimate, we must remember that many of these came under one or other of the "nocent" classes, but had the benefit of their articles of surrender. Most of the lords and gentry of Leinster were in this category. None of them therefore could have claimed "innocence." Two hundred is a very low estimate of their numbers.

[42] Finch says: "There were several times when the Commissioners wanted causes, and could not prevail with men to bring on their claims."

influence to secure an early hearing, and without money to support them while waiting trial. Of this class it is to be feared that most of them perished of want, or sank into the ranks of the peasantry.

Clarendon says that in the proceedings of the Court of Claims there were such forgeries and perjuries as were never heard of among Christians; but he adds that in this respect the English were as bad as the Irish.[43]

Petty asserts that of those decreed innocent not one in twenty really was so. But, as is often the case, Petty's statement will not bear examination. The innocence of the citizens of Dublin, Cork, etc. was notorious; there were special clauses in their favour in the Act itself. In their case the decree can only have been a mere formality to be granted as soon as the claimant had established his identity. Minors and persons who had been active from the beginning on the royal side were in exactly the same case. And the more confident of his case, and the more able to secure powerful patronage a claimant was, the more he would be anxious to get a hearing and the more capable of securing it.

In spite of the representations of the Commissioners the time for hearing claims to innocence was not extended. They could not for various reasons depending on technicalities in the Act proceed to hear the claims of the ensignmen and those who came under the articles of peace; none of these

[43] See also *Cal. St. Paps.*, 1664, p. 508, for allegations against Cromwellian witnesses of wholesale perjury.

therefore could be restored if this involved the dispossession of any adventurer or soldier.[44]

In the meantime a new wrangle went on before the Privy Council as to the provisions to be embodied in the new Act.[45]

The first draft of the Amending Bill which was sent over to England was entirely disapproved of by the King and Council. Orders were given to prepare a new draft, and this was largely drawn up by Ormond. It was sent to England in September; but was not discussed at the Council until November. Whether the draft first sent over and rejected contained clauses extending the time for hearing claims to innocence and for restoring the other classes mentioned in the Act of Settlement is not clear from Carte's narrative. That a draft Bill had been framed containing such clauses is clear from a letter from Lord Kingston to Secretary Bennet in January, 1663.[46]

The Commissioners for the execution of that Act were in favour of such clauses. Reasons why the periods should be extended are given in an unsigned document in the *Calendar of State Papers*, 1669—70, with Addenda. The date of this appears to be about September, 1663, and it may have come from Winston Churchill. It says: "It is evident that the expressing of the time was for hastening their restitution, and though the

[44] See *Cal. St. Paps.*, 1669—70, and addenda, p. 474; and also their own statement above cited.

[45] Sir Wm. Domville refers to the new Bill as early as Nov. 1662, that is, if the document is correctly dated in the *Cal. St. Paps.* "An Explanatory Bill has lately gone from here for lightening some dark places in the Act of Settlement," p. 627.

[46] *Cal. St. Paps.*, 1663—65, p. 3. He speaks of "the Act of Explanation lately remitted" having an unlimited time for judging innocents.

time be passed, yet it is plain their right is served" (query *saved*?) "and preserved by the Act as there is no negative word in the Act to forbid the hearing or determination of them after the day limited is passed."

Ormond in preparing the new draft did not think it proper to insert a clause for the relief of the unheard innocents: he proposed that the Lord Lieutenant and the Irish Council should have power to declare persons innocent and to restore them; acting, however, strictly in conformity with the conditions laid down in the Act of Settlement. This proposal was rejected by the English Privy Council.[47]

This body took the Bill into consideration in November, 1663, and allowed a hearing to the agents of all the various interests. If the draft before them had any clauses in favour of innocents or article men such clauses were soon dropped. They were absolutely against the Protestant interest. And they were not looked on with favour by the chief men of the Catholic party, mostly in the class of "nominees," restorable therefore only after the Cromwellian possessor should be reprised, and outside the category of innocents. Innocents were to be restored before reprisal; then the persons removed to make way for them were to be reprised; then, and only then, were reprisals to be sought for to permit of the removal of the soldiers and undertakers from the lands of the nominees. And so, as we are told by Sir Heneage Finch, the great men among the Catholics threw over their less influential countrymen, and made no real effort to secure an extension of the periods.

[47] Carte, Vol. II., p. 298.

It was pretended that the course most favourable to the Irish was to name in the Bill those persons who were to be restored. The foolish optimism of the Irish had, at the beginning, led them to ask for quite impossible conditions[48]; now their agents, while abandoning the mass of their countrymen, hoped for the individual restoration of themselves and of their friends. The *Calendars of State Papers* are full of petitions setting forth the causes of various individuals who hoped for inclusion in the favoured few.[49]

The Viscount Magennis of Iveagh, one of the ensignmen, had lost 45,000 acres.

Captain Daniel O'Sullivan Bere, lord of Bere and Bantry, prayed for restoration to the vast estates confirmed by Elizabeth and James to his grandfather and father for their services against the famous Donnell O'Sullivan of Dunboy. His property had not been set out to an adventurer or soldier, and he had obtained letters ordering his restoration. He had been given possession. But in spite of this Sir W. Petty and others deriving title from one Walters, "who is no adventurer or soldier, but got a great part of petitioner's estate from Cromwell as a gratuity for transporting and selling your Majesty's subjects beyond seas," had possessed themselves of his estate. He prays a clause restoring him.[50]

[48] Carte gives two reasonable schemes, one by Eustace, the other by Lord Montgomery, but says he cannot find that the Irish agents ever favoured them.

[49] See, for example, *Cal. St. Paps.*, 1669—70, p. 494 (addenda) for such petitions. Among the petitioners we find descendants of Elizabethan and Jacobean planters such as Dudley Colclough and Sir Thos. Esmond of Wexford.

[50] *Cal. St. Paps.*, 1669—70: addenda, p. 456.

But Petty kept a firm hold on the vast tracts he had acquired in Kerry and elsewhere. They duly passed on the death of Petty's sons, to his only daughter who married the head of one of the oldest Anglo-Norman families in Ireland, Thomas Fitzmaurice, twenty-first Lord of Kerry. Their descendant, the Marquis of Lansdowne, holds them to the present day. O'Sullivan Bere never recovered an acre.

As a final result of all petitions we find in the Act a number of clauses, often contradictory, restoring various persons. Some, such as Garret Moore of the Co. Mayo, and Colonel John Kelly of Skryne, were to be restored before reprisals; others, such as Lord Gormanston and Grace of Courtstown, only after the reprisal of those in possession. Some, such as Lords Mountgarrett and Mayo, were to be restored at once to their principal messuage and to such of their lands as were not in possession of any adventurer or soldier, and to the rest after reprisals. The son of Sir Thomas Sherlock was to recover his principal messuage and half his father's property at once; the rest after reprisals; Lord Dunsany was to get his castle and one-third of his lands before and the rest after reprisals.[51]

Arguments continued as to how best to provide reprisals. Each party put forward proposals. As the discussion proceeded gross frauds on the part of the adventurers were discovered which

[51] Many of those named above were to have been restored by the previous Act and by the King's declaration of Nov. 1660, but as yet had got nothing.

made them more pliable in their demands.[52] All the different parties came to see that compromise was necessary. The scheme finally adopted is said by Carte to have come from the Irish agents. By it the various Protestant interests gave up one-third of what they possessed in May, 1659, or of —in the case of the forty-nine officers, etc.—what arrears were due to them. This third was to provide for the necessary reprisals.

This scheme was adopted by the Privy Council, and in September, 1665, the Bill was transmitted to Ireland. After keen debates in both houses and much opposition from the adventurers it was passed and received the Royal Assent in December.

That the Act of Explanation failed to satisfy any of the contending parties is perhaps the best thing that can be said in its favour. It is sometimes contended that it was unfavourable to the Protestant interest, and the picturesque account to be found in the *Calendar of State Papers*, 1663—1665[53] of the final scene in the House of Commons, where members in the fading light confronted one another with half-drawn swords, proves that this was the view taken of it at the time by the more stalwart Cromwellians. But although they had to make substantial sacrifices, the detriment caused to their interests by this Act

[52] See the case of Blackwell. *Cal. St. Paps.*, 1660—62, p. 433. He had got lands estimated to be worth £80,000, though he had never adventured or spent anything as far as the Lord Chancellor could find. See also the cases of Dick and Cunningham as set out in the Act of Explanation. They had got over 15,000 acres in Tipperary and Limerick although they had never "adventured" anything. Clause CLXIX. Also see Sir Wm. Domville on the frauds of Whaley and others. (*Cal. St. Paps.*, 1663—65, p. 270).

[53] See the introduction and pp. 669 and 687.

was as nothing compared to the ruin it brought on most of the Irish.[54]

For it excluded once for all from all hope of restoration the unheard innocents, those claiming the articles of peace, and the Ensignmen except such few of this last class as had been lucky enough to recover possession before the passing of the Act. This had happened only in those few cases where the lands had not actually been set out to any Cromwellian. Furthermore it deprived the King of the power of restoring innocents to their property in Corporations given him by the Act of Settlement. As a slight set off those of the Irish who had obtained Royal letters of restoration, and had been able to profit by them through the accident that there was no Cromwellian in possession, were now confirmed, provided they had been in actual possession on August 23rd, 1663. In this way, for example, the Mac Gillicuddy of the Reeks recovered his vast tracts of mountain and bogland. It is true that the confirmation was to extend only to the principal seat and 2,000 acres; but in this case the King ordered that as the land was so poor the computation was to be made "by a reduced column," *i.e.*, casting in many acres for one to make it valuable.[55]

There was a further concession or what was meant as such. Twenty-two persons were to be restored to their principal seat and to 2000 acres adjoining provided that they had had so much in

[54] Winston Churchill is especially strong on the injustice done to the Irish. He speaks of "the wickedness of the Bill" (*Cal. St. Paps.*, 1663—65, p. 248: see also pp. 255—6). So, too, Sir Wm. Domville condemned it.

[55] *Cal. St. Paps.* 1669—70: addenda, p. 678.

1641.[55] But by the same clause six peers and twenty-seven others of the fifty-six nominees specially mentioned for restoration in the Act of Settlement were now to get only their principal seat and 2000 acres, and this only *after* reprisals. Amongst the new names were those of Lord Iveagh, and Lord Bourke of Brittas; amongst the nominees of the former Act still unprovided for were the Earl of Westmeath, Lords Ikerrin, Dunboyne, Trimlestown, Upper Ossory and Birmingham. Some of these, perhaps most, ultimately recovered some at least of their lands. But the clause requiring previous reprisals was a fatal bar to others. Finally an Act of William and Mary in 1698 barred all further claims under this clause.

There is something curiously modern about all these proceedings. On the one side we have the credulous optimism of the Irish, their idea that logic and right should override might, their belief in the justice of their cause leading them to ask for the unattainable, their inability to realise the dislike with which they were regarded by all parties in England, their failure to perceive that in the minds of Englishmen the interests of England outweighed all other considerations, their want of union, the selfishness of their great men, in other words a complete absence of political insight and ability.

On the other side there is the grim determination to make no concession without a struggle, the threat in the last resort of the sword, the appeal to race hatred and religious prejudice, the amazing

[56] Clause CXLVIII. has 21 names; Clause CCXXVII. adds another.

dishonesty of individuals seeking for place and profit.

Sir William Petty perhaps gives the best summing up of the whole:—"But upon the playing of this game or match upon so great odds, the English won and have (among and besides other pretences) a gamester's right at least to their estates."

Let us sum up the final effects of these two Acts. In 1641 there were, at the lowest estimate, eight thousand Roman Catholic landowners in Ireland. Of these all except twenty-six were deprived of their property by Cromwell.[57] A certain number of the dispossessed received compensation west of the Shannon amounting to two-thirds or to one-third of their former holdings. We have seen that there is an official list extant from which it would appear that about two thousand persons were thus compensated.

Now if we come to the state of affairs after the execution of the Acts of Settlement and Explanation we find that between 500 and 540 Catholics were restored as innocents; and that, when the status of the transplantees to Connaught was finally regularised in 1677, 580 persons received letters patent. If we add to these the nominees in the two Acts; and such of the letterees and ensignmen as ultimately recovered some portion or all of their lands we cannot allow a grand total of Catholic landowners for all Ireland under Charles

[57] That is if we can believe Petty.

II. of more than thirteen hundred at the outside.[58]

This would lead to the apparently absurd result that there were fewer Irish Catholic landowners after the execution of the two Acts than there had been under Cromwell. The explanation would seem to be that among the two thousand who are said to have received assignments from Cromwell west of the Shannon there were first a certain number who did not receive assignments in fee-simple, second some whose allotments were so small as not to have been worth notice in 1677, third some who never actually got possession of the lands assigned to them, and finally that a very large number of the poorer transplantees sold their lands at once to Protestant purchasers.[59] These Protestant purchasers were evidently uneasy about their rights, as special promises were asked for from the King by some of them, and clauses to protect them were introduced into the Acts. It is to be noted that the Books of Survey and Distribution show that in 1666 a large amount of land in Clare was held by the new interest, a fact that can only be explained by purchase or by fraud.[60] It is also possible that in the case of the landowners west of the Shannon who had got from the Cromwellian authorities assignments on what had been their own property in 1641 no new

[58] The two Acts provided for the effectual restoration of about 100 individuals by name mostly *after* reprisals. In addition some few Ensignmen got back, and also a few *letterees*, *i.e.*, those who obtained royal letters before the passing of the Act of Settlement and found no one in possession of their lands.

[59] Of the two thousand 750 got less than 100 acres, and of these 110 got less than 20 (*Bonn*). Possibly many of these had been only tenants or leaseholders in 1641.

[60] Petty estimates the Protestant purchases in Connaught at only 80,000 Irish acres.

letters patent were thought necessary in 1677. This would bring the number of transplantees who finally held lands west of the Shannon above the figure of 580.

The whole matter however still requires a further investigation, and perhaps certainty cannot now be obtained.

There is equal uncertainty and an immense discrepancy between the estimates of various writers as to the area actually affected. The most often quoted synopsis of the whole question is that given by Petty. According to him the Catholics in 1641 owned something over two-thirds of the profitable lands of Ireland. He estimates these at three-fourths of the whole, *i.e.*, at fifteen million English acres: the Catholics therefore held over ten millions of good land, and a proportionate share of the "unprofitable" lands.[61]

Of the total forfeited area 700,000 Irish acres were set out to transplanted persons under Cromwell and 40,000 left to the twenty-six who had manifested constant good affection to the Parliament. Then at the Restoration the innocents got back nearly 1,200,000 acres, letterees and nominees 60,000; while "to Papists *per proviso* with Colonel Vernon"—whatever this may mean—360,000 were set out. So he finds, deducting

[61] Petty believed that the area of Ireland was about ten and a half millions of Irish acres or about seventeen million English acres. The true area is a little over twenty million English acres. Hence if we multiply Petty's estimates by two we come approximately to the true measure in English acres.

The pamphlet "The State of the Papist and Protestant Proprieties in the Kingdom of Ireland" is based on Petty's figures. It differs from him in stating that Cromwell left 100,000 acres to those that proved Constant Good Affection.

80,000 acres of Protestant purchases in Connaught, that in 1672, when he wrote, the Catholics held 2,280,000 plantation acres of profitable lands, *i.e.*, something less than half of what they had held in 1641; or in round numbers four and a half out of the fifteen millions of profitable English acres; a total loss to them of something more than five and a half millions.[62]

As Petty had a taste for statistics and had every opportunity for ascertaining the facts, one would at first sight be inclined to accept his conclusions as accurate. But Hardinge, who has founded his calculations on an actual examination of the figures contained in the different existing surveys, arrives at a totally different result as to the area confiscated. He has published a statement for each barony and for each county showing the total extent of land forfeited in each. According to his figures eleven million English acres were confiscated, of which 7,700,000 were profitable. In this total were included church lands and the estates of Ormond, Inchiquin and other loyalist Protestants. The remaining nine millions belonged to Protestants who had either sided with or made their peace with the usurpers. So that we may take it that

62 Lawrence, *Interest of Ireland*, thinks that as a result of the Restoration settlement 2,041,000 acres out of a total area for the whole island of 10,868,000 were left in Catholic hands.

Orrery sent a detailed statement to Ormond in May, 1664, according to which 1,400,000 plantation acres had been decreed and restored to the Irish since the Restoration, besides what had been decreed and restored to Lords Clanrickard, Carlingford, Dillon and others in Connaught. But of one item in the list, 321,000 acres restored by his Majesty's letters and by order of the House of Lords, he does not know how much had actually been decreed.

in 1641 the Catholics held something more than one-half of the land of Ireland, instead of over two-thirds as Petty supposes.

If we next examine Petty's figures as regards the results of the Restoration settlement we find that at first sight his figure for the extent of land set out to the transplanted, 700,000 Irish acres agrees closely enough with the total in Eliot's list, viz., 717,000 Irish or 1,162,000 English acres. But if we can trust a statement of the Irish agents there were still in or about 1664, 156,000 acres due to persons who had obtained decrees for lands in Connaught under Cromwell, but who had got none.[63] Probably many, if not most, of these persons never got any satisfaction, so that Petty's figure must be substantially reduced here.

Then it is quite impossible to believe that something over 500 innocents got back 1,200,000 Irish acres, nearly one-sixth of all the profitable land in the island, and working out at over 4000 English acres a head.

Both parties seem to have agreed that 400,000 acres would be required to satisfy the nominees;[64] but this may have been before the actual list was decided on; in any case it is certain that many of the nominees never got full satisfaction.

It is remarkable that the area held to be forfeited by the adherents of James II. amounted only to something over 1,100,000 Irish acres inclusive of the estates of those comprised within the articles of Galway and Limerick. There can be no reasonable doubt that, as all the Catholics of Ireland had sided with James against William, so

[63] *Cal. St. Paps.*, 1663—65, pp. 708—9.
[64] *Cal. St. Paps.*, 1663—65, p. 708.

the estates of all were forfeited except in those cases where the owners made special terms for themselves by a timely submission, or were minors or persons otherwise incapable of incurring the penalties for treason, or were acquitted by partial juries. So that it would appear that at the accession of James II. only at the outside one-seventh or one-eighth of the total area of the island remained in the possession of Catholics.[65] If this is so it shows that Petty's figures do not deserve the credit which is generally given to them.

But the broad results of the Restoration settlement can be more easily arrived at. It involved the ruin of the great mass of the old proprietors. Those who recovered their estates were in general the great men, magnates such as the Marquis of Antrim, the Earls of Clancarthy and Clanrickard, the lords of the Pale, or else the citizens of the five loyal towns. The lesser men were deprived of everything.

In the barony of Carbery there were about 400 landowners in 1641; the Books of Survey and Distribution show that scarcely ten of them held any land after the Restoration. In Kerry there had been over 540 Catholic landowners; hardly any recovered. In the Wexford Barony of Forth there had been 125 Catholic landlords, all of old English descent: not a single one survived the storm.[66]

[65] It is possible that the Report *re* forfeitures omitted some lands secured to their owners by arrangement with the King. The Abercorn estates, for instance, do not seem to be included. And the Commissioners complain that since no inquiries into forfeitures were held in Connaught until 1695 many persons really guilty were acquitted by juries composed of persons within the articles of Limerick.

[66] These figures are from "Forfeiting Proprietors Listed" in Hart's *Irish Landed Gentry when Cromwell came to Ireland*; the list is signed Christopher Gough and dates from 1657.

Above all we must date from this period the destruction of the smaller men who had formed a veritable peasant proprietary west of the Shannon, and in some other Irish districts such as the Cork barony of Carbery. With them vanished too almost all the smaller gentry, owners of from two to five hundred acres, who abounded in the Anglo-Norman districts such as Kilkenny, South Wexford and South Tipperary.

Of the great men, too, though some such as Ormond, Clancarthy and Clanrickard actually increased their revenues, numbers were completely ruined. In Cork Mac Carthy Reagh, O'Sullivan Bere, Mac Donough Mac Carthy of Duhallow lost every acre of their immense possessions. A similar fate befell Viscount Magennis of Iveagh in Ulster, Lord Clanmalier in Leinster, and O'Conor Don and O'Conor Sligo in Connaught.

In all Ulster some writers have asserted that only three of the dispossessed Irish landowners were restored, Lord Antrim, Sir Henry O'Neill, and Daniel O'Neill, this last a Protestant. In reality a few more got back.[67] But sometimes restoration was but nominal. Lord Massereene kept his grip on Daniel O'Neill's estate until the latter's death. He clung to Sir Henry O'Neill's lands until 1666, and only relinquished them in return for ample compensation in Dublin and Louth. The Connaught innocents could not recover their lands until such transplanted persons

[67] *e.g.* Phelimy Magennis (*Cal. St. Paps*, 1669—70, p. 486), Con Magennis (*Cal. St. Paps.*, 1663, p. 308), Patrick Russell (he had been left undisturbed by Cromwell), *ibid.* Furthermore the sons of a certain Manus Magennis who had been absent in Sweeden during the troubles held their father's property after the Restoration (Atkinson: *An Ulster Parish*).

as had obtained possession of them had been first reprised. According to the Irish agents 47,000 acres were still in 1664—5 withheld from innocents for this cause.[68]

The unheard innocents and those who claimed the articles of peace obtained no redress. Some may have repurchased their former lands; others became tenants of what they had formerly owned, thus starting the class of "middlemen"; the bolder spirits took service with foreign states, or as Tories harassed the new settlers. The weaker starved or sank into the condition of peasants. In some cases the former tenants supported, for a time at least, their old landlords, paying a double rent, or giving them free quarters according to the old Irish custom in their houses.

Sir H. Piers in his account of Westmeath says that the ancient and noble family of the Barons of Rathconrath were then represented by a shoemaker, and a couple of poor cottagers. A German traveller of the early days of the nineteenth century tells how he found in the hands of an illiterate peasant on the Lansdowne estate an official copy of the deed of partition made by the Elizabethan Commissioners in 1594 of the lordship of Bere and Bantry between Sir Owen O'Sullivan, his brother Philip the Tanist, and his nephew the celebrated Donnell of Dunboy. Questions elicited the fact that the peasant was the direct descendant of Philip whose share had been the castle of Ardea and 6 ploughlands.[69]

[68] *Cal. St. Paps.*, 1663—5, pp. 708—9.

[69] The traveller was a certain Mr. Beltz. The story is retold from *Weld's Killarney* in *Journal of Cork Hist. Soc.*, 1899. The date of the incident was 1803.

Of the nominees many never recovered even their chief seats and 2000 acres as provided by a clause in the Act of Explanation. The benefit of this clause was finally taken away from them by an Act 7th of the 10th of William and Mary, which declared that no letteree, nominee, etc. could recover after Oct. 29th, 1698.[70]

Of the Ensignmen the lucky few whose lands had never been set out to an adventurer or soldier recovered; many perished of want in London or fell victims of the plague. Others received small pensions from the Crown, or took service at Tangier. Fortunate were those who recovered so much of Irish land as would afford them a grave.

[70] This Act also laid down that no person who had been decreed "innocent" by the Court of Claims under the Act of Settlement; but who had been left to the law to recover his lands could recover after Oct. 29th, 1698.

CHAPTER VII

JACOBITES AND WILLIAMITES

The dispossessed Irish, with characteristic optimism, did not abandon their hopes of redress, nor desist from their efforts to obtain it.[1] The persistency of Talbot and others of their agents prevailed so far that in 1670 the King ordered Sir Heneage Finch, the Solicitor General, to report on the alleged grievances done to the Irish by the Act of Explanation. The report, professing impartiality, is an excellent example of special pleading. It was easy to prove to the satisfaction of the King that he was not bound to keep the peace extorted from his father's and his own necessities in 1648. As to the unheard innocents, Finch, while admitting that there were over 4000 in this case, declared that many of them would have failed to prove their innocence, and that of those who could have done so most, if not all, had received from the usurper lands in Connaught, and so were not altogether destitute.[2] Both these

[1] For the general history of this period, see Murray: *Revolutionary Ireland and its Settlement*. The work is of course strongly anti-Jacobite; but has a useful corrective in the introduction by Dr. Mahaffy. This points out that Dr. Murray has given too much credence to Archbishop King. Davis in the *Patriot Parliament of* 1689, gives a very clear account of the proceedings of James' Parliament, but of course he takes the opposite standpoint to Dr. Murray's.

[2] He says, what seems borne out by the records of the sittings, "There were several times when the Commissioners wanted causes and could not prevail with men to bring them in."

statements are no doubt to a great extent true. So, too, would seem to be his charge against Talbot and the leading men of the Irish that they had at the time of the passing of the Act made no real effort on behalf of the unheard innocents, since as nomineees it was to their interest not to diminish the limited amount of land available for reprisals; for their own restoration depended on their being enough reprisals left after restoration of innocents to allow of compensation to the Cromwellians actually in possession of their, the nominees, estates.[3]

The King professed himself satisfied with the arguments put before him, and declared his intention of upholding the Acts of Settlement and Explanation.

In 1675 it was brought to his notice that the transplanted persons in Connaught and Clare had as yet received no legal titles to the estates assigned to them by the Cromwellian government.[4] This was set right by the issue of letters patent to the transplanted. In all 580 grants were issued, a number which appears surprisingly small. It is possible, however, as I have already said, that new grants were not considered necessary in cases where the Cromwellians had assigned to the land-

[3] Finch's report is printed in the appendix to Carte's *Ormond*.

[4] All transplanted persons were to put in their claims: all in possession of lands were to have their due share set out and confirmed by Letters Patent: all not yet satisfied were to be reprised from lands still undisposed of. The document states that many had been dispossessed of the lands assigned to them by Cromwell (in order to restore innocents and others who had decrees under the Act of Settlement) and had not yet been reprised. *Ormonde MSS.* 1899. Vol. II. Old Series, p. 348.

owners within the various qualifications their proper proportion out of their former estates.

In 1684 a "Commission of Grace" was issued, for securing defective titles, and for disposing of lands still in the King's possession. The number of grants under this Commission was 223 and some Catholic landowners at least were included among the grantees. The recipients of grants were to pay a fine which was intended for the benefit of such of the nominees and innocents transplanted to Connaught for whom as yet no compensation had been found. The money however, found its way into the pockets of the Duchess of Cleveland.[5]

Although James had always shown himself ill disposed to the Irish, yet towards the end of the reign of Charles II. his own interest began to point towards the utility of conciliating and strengthening them as a balance to the probable hostility of the more fanatical among the colonists. Still more was he urged towards a policy of conciliation when after his accession he entered on a course destined to lead to a breach with his English subjects.

Talbot, now Earl of Tyrconnell, was first given command of the army, then in 1687 made Viceroy, the only instance from the time of Elizabeth to the present day of a Catholic holding that post.

The King was determined to uphold the Act of Settlement, and instructed Clarendon, Tyrconnell's predecessor, to oppose all efforts to have it reversed. The same policy was maintained after Talbot's appointment. Early in 1688 Nugent and Rice, two recently appointed Catholic judges,

[5] Bonn: Vol. II., p. 118, quoting the Carte papers.

went to London to urge the repeal of the obnoxious Act. But they found no favour with either King or Council; and the insults to which they were exposed from the London mob proved how hateful was the Irish name to the mass of the English people.

But on the other hand Catholics were admitted to the army, and to the corporations; Protestant soldiers were disbanded,[6] the charters of corporations were called in, and new ones issued giving to the Catholics a preponderance among the freemen, even in places like Derry where practically the whole population was Protestant.

In 1687 there were Catholic sheriffs, and Catholic Justices of the Peace: before that Protestant judges had been removed and replaced by Catholics, and several of that religion had been admitted to be Privy Councillors.[7] A Protestant officer who had murdered a Catholic gentleman was tried, convicted and hanged. These measures of course caused widespread alarm amongst the colonists. Rumours of an impending massacre were spread and believed.[8] The colonists began to draw together for safety, or to fly to England. The native element, on the other hand, became

[6] According to Murray 300 officers and 6000 men were turned adrift, p. 61.

[7] According to Murray the new Lord Chancellor, Fitton, a convert—he was descended from an Elizabethan "Undertaker"—held that among 40,000 Protestants there was not one who was not a traitor, a rebel and a villain. Naturally the Irish Catholics were still more convinced of this.

[8] An anonymous letter, dated Dec. 3rd, 1688, was found in the street at Comber, Co. Down, purporting to be a warning to Lord Mount Alexander that there was a plot to massacre all Protestants. Murray, p. 71. He admits that the letter "was a hoax." This is strikingly reminiscent of recent events.

restless, acts of robbery were frequent, debts were not paid, Protestants could obtain but small redress from magistrates and sheriffs.

Finally, late in 1688, not long after the successful landing of the Dutch army in England, but before the flight of James, portions of Ulster revolted.[9] Tyrconnell was not the man to cope with this emergency; in any case the means at his disposal were insufficient; the rebellion grew in strength; and before long the authority of James was defied over a large portion of the province.

Then in February the English proclaimed William and Mary as sovereigns. The greater portion of the Irish Protestants openly or secretly acquiesced in this; but some Protestants and all the Catholics still clung to the cause of James.

The loss of Great Britain did not involve the loss of Ireland. There the government had sufficient forces at its disposal to keep down the disaffected, and the administration continued as before to be carried on in the name of James.

It must be remembered that the theory that the *de facto* ruler of England becomes automatically the *de jure* ruler of Ireland was by no means looked on as established in the seventeenth century. Just as it was quite certain that the execution of Charles I. and the proclamation of a Republic in England could not affect the rights of Charles II. to the Crown of Scotland, so many, if not all, of the legal authorities in Ireland were of opinion that a successful revolt in England did not release

[9] Derry shut its gates on Dec. 7th. Enniskillen revolted a few days later.

the Irish subjects of James from their allegiance to him.[10]

Even under William III., Molyneux roundly asserted that the King is King of Ireland precisely as he is of Scotland, and this at a time when the independence of Scotland was unchallenged. Tyrconnell, after some hesitation, real or pretended, definitely refused to recognise William and Mary as his sovereigns.

Accordingly when in March, 1689, James landed at Kinsale he found his authority recognised over the greater part of the island. In February Tyrconnell had disarmed the southern malcontents; and a force was sent to Ulster which soon overran the greater part of that province.

James himself after a short stay in Dublin proceeded to the north; but before his departure he had summoned a meeting of Parliament; and the body thus convoked assembled at Dublin on May 7th, 1689.

As usual our printed authorities differ widely as to the composition of this Parliament. Admittedly it was the first for half a century in which the Irish element was adequately represented. As to the colonist element Murray and Davis differ widely. According to the latter, of a possible total of 300 only 224 members sat in the House of

[10] Murray holds the contrary view, namely, that the Crown of Ireland was by the Statute Law of Ireland, annexed to that of England (p. 111). But his interpretation of this could not, I think, have been upheld in the 17th century without great risk to the upholder. The whole public law of the period looked on James as the lawful sovereign, William as an usurper, his partisans as rebels.

Commons; the vacancies being caused either by the fact that some boroughs were the seat of war, and that others had had their charters cancelled by James. Bonn, following King, says that 232 members appeared and Murray follows him. Of these, according to Archbishop King, six were Protestants.

In dealing with the composition of the House of Lords Murray professes to follow King, and here it seems impossible to accept his statements. He declares that the total number who attended was 36, of whom five temporal and four spiritual peers were Protestants, and that of the Catholics 17 owed their seats either to new creations or to the reversal of attainders. King himself, however, puts the matter somewhat differently. According to him the total number of Papist peers in Ireland was forty-five, including new creations, of which he says there were four, although in reality there were five. But a little further on he says that of thirty-seven Papist lords there attended twenty-four at times, besides the new creations; and that, of these twenty-four, fifteen were under attainders by indictments and outlawries. He further says that only four or five of the Protestant lay peers attended.

But in an appendix he has a list which purports to give the actual composition of James' House of Lords. This list gives forty-eight lay peers, one Archbishop and four Bishops of the Established Church. Of the lay peers named, eight certainly, eleven possibly, were Protestants.

Now it appears certain that, including Fitton the Lord Chancellor, there were only five new

creations. And it seems difficult to believe that thirty years after the Restoration there were still twelve Catholic peers as Murray says, or fifteen, if we follow King, whose attainders, often resting merely on their opposition to Cromwell, had not been reversed.[11]

Davis, on the other hand, giving authorities for each name, declares that the total number of peers who sat was fifty-five. Among them he names the Archbishop of Armagh and five other Bishops of the Established Church, and at least nine of the temporal peers, whose names he gives, would appear to have been Protestants.[12]

It is admitted that many of the Acts of this Parliament are distinguished by ideas of tolerance and an appreciation of the economic needs of the country far in advance of the general ideas of the age. They may be found set out in Davis' work. But two of the Acts passed have been the subject of the severest strictures from the majority of historians.

[11] A "List of the Nobility of Ireland in 1688" printed at the end of the pamphlet "The State of the Papist and Protestant Proprieties" gives only twenty-one Catholic peers, among them Baltimore, Castlemaine, Baresford (*sic.*) and Bronkart. It gives Clancarthy and Clare among the Protestants; also Howth, Kerry, Kingston and Kinsale. Omitted are Limerick, Louth, Trimleston, Netterville, Dunsany, Dunboyne, Mountgarret, and several others.

[12] It appears that the Archbishop of Armagh though summoned was excused attendance on account of age. Two others, Killaloe and Waterford, were also excused; but sent their proxies against the repeal of the Act of Settlement.

Lords Kinsale, Kerry, Howth, Kingston, Cavan, Longford, Granard, Ross, Monaghan, Ballyshannon are all given by Davis, the three first were old Anglo-Irish, the others new English. Lord Ikerrin was a Protestant in 1698. King gives Barrymore and Malone, Baron Glenmalun and Courchey.

The first of these Acts repealed the Act of Settlement, and enacted that everyone was to be restored to the possession of what he or his ancestors had been lawfully in possession of on October 23rd, 1641. This enactment, therefore, did not interfere with the nine million acres which, as we have seen, had been in the possession of Protestants on that date. But it retransferred to the Catholics everything of which they had been deprived by Cromwell and by the proceedings after the Restoration dealt with in the last chapter. The loss caused to the Protestant interest therefore was equal to the amount so transferred from Catholic to Protestant hands and would therefore be at the lowest, *i.e.* Petty's estimate, five million English acres. But, as has been said before, Petty's figures cannot be relied on, and there are some grounds for believing that, of the eleven million acres held by Catholics in 1641, they had only retained or recovered something between two and a quarter and three millions. In this case at least eight million acres would now, after a lapse of nearly forty years, be retransferred to Catholic hands.

But during these forty years many of the lands in question had changed hands by *bona fide* sales. It was felt that compensation was due to all who had expended money on the purchase of lands which they were now to restore to the representatives of the owner in 1641. Of such purchasers many no doubt were Catholics, for under Charles II., Catholics were not impeded in purchasing landed property. All purchasers, therefore, of lands now restorable were to be compensated, and

compensation was to be given in the form of a "reprise" of other lands of equal value. These lands according to clause 10 of the Act were to be provided out of lands forfeited to the Crown by those who on August 1st, 1688, or at any time since had resisted James.[13]

There were further provisions for the compensation of deserving persons who lost their estates, and James set apart £10,000 a year out of his own private estate for further compensation for this class.[14]

To deal with those who refused to acknowledge James an Act of Attainder of the usual type was passed, declaring their lives and property forfeit if they did not submit and stand their trial before certain specified dates.

But it is to be noted that there was a special clause excepting 85 persons who were absent from nonage, infirmity, etc. Their properties however were to be vested in the King until the absentees could return and apply by petition for restoration.

As usual it is difficult to arrive at exact figures for the persons affected by this Act. About twelve hundred and eighty persons were attainted as having actually perished in the rebellion or having notoriously joined in the said rebellion and invasion, unless before the 10th of August, 1689, they returned and stood their trial. Then about

[13] Macaulay seems entirely to ignore the existence of the provisions for the compensation of purchasers. He devotes the greater part of two paragraphs to a denunciation of the injustice to persons who had sunk money in the purchase or improvement of forfeited estates.

[14] It was also provided that the money paid for bona fide purchases of transplanted estates was to be paid over to the Crown by the ancient proprietor, and was to be used to increase the fund for reprisals.

450 persons who had absented themselves from the kingdom since or shortly before November 5th, 1688, were attainted unless they returned before September 1st.

A third clause, according to King, condemned nearly two hundred absentees who had left the country before November 5th, 1688, unless they returned before October 1st, but nearly sixty of this number whose usual residence was in England were excepted from the operation of the clause unless James went to England before October 1st and unless they then failed to show their loyalty.

In all, therefore, it would seem that, if we follow King as corrected by Davis, between eighteen and nineteen hundred persons were attainted; and if we follow Harris, and a pamphlet cited by Davis as "the List" the number may possibly be two thousand two hundred.[15]

Some writers have attempted to deny the existence of this Act, asserting that it is a forgery made by someone in the Williamite interest. This view according to Davis cannot be sustained. But it seems difficult to accept Archbishop King's statement that the terms of the Act were kept a secret, and that none of those named in it could ascertain whether they were included in it or not. That an Act debated on in both Houses, and known to clerks, printers, etc. could be thus kept secret appears quite incredible.

These two Acts have brought down volumes of

[15] The lists as given by King, Harris and the pamphlet published in 1690 differ widely. Davis treats of the whole question very fully. Murray does not attempt to decide the true number.

The lists were hurriedly drawn up, and the same persons sometimes figure in more than one category.

abuse on the heads of their authors. Especially have the clauses ordering the return from England within a certain time under pain of forfeiture been marked out for blame.[16] It is said that, first, such persons could not have been made acquainted with the provisions ordering their return and, secondly, that it would have been almost impossible for them to return if they had wanted to. Both these objections are true; but on the other hand it is extremely unlikely that any considerable number of the persons named in these clauses would have wanted to return.

As to the Acts in general, barely a generation had passed since clause (1) of the Act of the Long Parliament for the Settlement of Ireland had condemned practically the whole adult male population to lose both life and estate, and since the Act for the Attainder of the Irish Rebels (1657) had attainted all Catholic and many Protestant landowners, excepting of the Catholics only those falling within the classes of comparatively innocent laid down in the first Act. At least eight thousand Catholic and about one hundred and seventy Protestant landowners had lost everything under the Cromwellians; now about two thousand Protestants, and possibly a few Catholics, were to lose their estates unless, within certain specified periods, they could prove their loyalty. Yet Macaulay can assert that "they"—the colonists—"never came up to the atrocious example set by

[16] Macaulay actually calls it "a law without a parallel in the history of civilised countries." We must only conclude that he did not consider England under the Commonwealth a "civilised country," or that he had never read the Acts of the Long Parliament dealing with Ireland. He believes that the names in the Act of Attainder were really kept secret.

their vanquished enemy during his short tenure of power."[17]

And just as, in spite of the apparent ferocity of the first clause of the Cromwellian Act of Settlement, the death penalty was in no case inflicted, so there is no proof that the Jacobite Act would have taken more than the estates of the rebels.[18]

Much also has been said of the impolicy of these two Acts. King James and his English advisers were against them, as they involved a definite breach with the whole Protestant interest. This they undoubtedly did, and it has also been said that if these Acts had not been passed the treatment of the Jacobites in their hour of defeat would have been more lenient. It would certainly have been more prudent if the Irish had abstained from measures of retaliation until they had made sure of ultimate victory. But the Irish had before them the example of the English Act of 1642; they had been kept for nearly forty years out of their own, and they would have been more than human if they had now refrained from taking it back. And there is not the smallest reason to believe that, if the Jacobites had not passed these Acts, the Williamites in their turn would have refrained from confiscation.

However this may be, as soon as the partisans of William had gained the upper hand, they pro-

[17] Chap. XII.

[18] Much has been made by Macaulay and others of the fact that the power of pardon was taken away from James if not exercised before Nov. 1st, 1689. But there had been precisely similar enactments preventing Charles I. from pardoning the Irish rebels, and preventing Charles II. from exercising the royal prerogative after the passing of the Act of Explanation. The Act to Hinder the Reversal of Outlawries of 1697 took away the King's power of pardon after July 27th, 1697, except as regards the death penalty.

ceeded to indict and outlaw the partisans of James. One would expect that as regards this, the final confiscation in our story, the information available would be full and clear. But, when one comes to examine the various printed accounts one finds that there is scarcely any set of transactions in our whole history as to which it is so difficult to arrive at the exact facts. I have endeavoured to set out these facts as accurately as possible, yet there are many points which still appear to me obscure.

Unlike the Cromwellians, the Williamites did not proceed to a wholesale confiscation, leaving to the victims the onus of proving their innocence. Commissions were issued to various persons to inquire into the conduct during the late "rebellion" as the support of James was now called, and verdicts were to be brought in in the usual way by juries of freeholders.

These inquiries went on from 1691 until Sept. 1st, 1699, the date fixed by the Act passed in 1697 entitled an Act to Hinder the Reversal of Several Outlawries and Attainders, etc.[19]

One would expect that apart from persons who through infancy, physical disabilities, or absence could not be considered guilty of rebellion, and apart from those few persons, if there were any such, who saved their estates by a timely submission, the persons outlawed by this procedure would have included all Catholic landowners in Ireland.

[19] It was laid down in the Act to Confirm the Articles of Limerick that the "rebellion" was to be deemed to have commenced on April 1st, 1689, that being the date allowed for submission by William's proclamation of February of that year.

But we are told, on the authority of the Commission of 1699 that in many places, notably in the west of Ireland, juries, often composed of adherents of James who had been secured in their estates by the Articles of Limerick, refused to convict persons whose support of the fallen monarch was notorious.[20] As it was, however, the Commissioners of Irish Forfeitures reported in 1699 that 3,921 persons in Ireland as well as 57 who resided in England had been attainted and outlawed, and that these persons between them owned over one million and sixty thousand Irish Plantation acres.[21]

But these figures raise difficulties. We have seen that, as a result of the Acts of Settlement and Explanation, the total number of Catholic landowners in Ireland restored or confirmed under the Acts of Settlement and Explanation can hardly have exceeded thirteen hundred. So that it is not possible that the 3,921 persons outlawed, even if, as is certain, some Protestants were among them, were all landowners. In the number were probably included many younger sons and other relatives of landowners, holding no landed property, merchants, members of the learned professions and so forth. For example, D'Alton mentions that the lists of those attainted con-

[20] They say that no enquiries into the forfeitures were held west of the Shannon until 1695.

[21] Nos. (12) and (14) of the Report of the Commission. It seems plain that their figures all through refer only to "profitable" land. No (76) of the Report adds between 70,000 and 80,000 acres to the forfeited area.

There were no forfeitures in Derry, Donegal, Tyrone or Leitrim, which would show that no Catholics recovered lands there at the Restoration, except the Abercorn family, the head of which had been pardoned by William in 1692.

tain the names of one hundred O'Neills, while we know that not ten of that name can have held any land after the Restoration. Yet making all deductions the number attainted seems surprisingly large.[22]

And on the other hand the amount of land they are said to have held between them seems surprisingly small, even though to the area specified we must add a certain amount for lands of which the Report says no proper surveys existed, and also between seventy and eighty thousand acres for small scattered parcels of which many, they say, only amounted to a single acre.

If between them the forfeiting persons held only something over one million one hundred thousand *plantation* acres, or allowing for Petty's error, concealments, etc. something like two and a quarter million *English* acres, what credence can be given, as I have said already, to Petty's statement, accepted blindly by most modern writers, that the Catholics after the Restoration settlement still held one-third of the profitable land of Ireland, *i.e.*, five million English acres? These are points deserving of a fuller study than can be given here.[23]

[22] See for information as to the lists of attainders Appendix to the 17th Report of the Deputy-keeper of the Public Rolls.

[23] On the other hand it seems difficult to accept the figures of the Commissioners. The Earl of Clancarthy, the Earl of Limerick and Viscount Clare between them forfeited nearly 400,000 English acres. Among those secured by the Articles of Limerick was the Earl of Antrim, the owner of an immense estate, and, for a time, Grace of Courtstown who held over 30,000 English acres. In the forfeited area also were included the immense estates of the Earls of Clanrickard and Kenmare; the former ultimately restored by the King, the latter secured to the Kenmare heirs by the Court of Claims.

From the penalties of outlawry and forfeiture were excepted, of the above 4,000, all such persons as could show that they were comprised within the Articles of Galway and Limerick. They were to be pardoned on submitting to William, to have their attainders and outlawries reversed and to enjoy their property as they had held it in the reign of Charles II.

The first set of articles, referring to the inhabitants of Galway, and of such of the garrison as chose to submit, present no difficulties. But round the latter set, which laid down the conditions of submission for the whole of the remaining partisans of James fierce controversies have raged. For our present purpose the important article of the Civil Treaty of Limerick is the second.

This laid down that "all the inhabitants or residents of Limerick, or any other garrison now in possession of the Irish, and all officers and soldiers, now in arms under any commission of King James, or those authorised by him to grant the same, in the several counties of Limerick, Clare, Kerry, Cork and Mayo, or any of them, *and all such as are under their protection in the said counties;* and all the commissioned officers in their Majesties' quarters, that belong to the Irish regiments, now in being, that are treated with, and are not prisoners of war, nor have taken protection" shall on submitting be left in possession of all their estates, rights, titles, etc. which they held or were lawfully entitled to in the reign of Charles II.

But according to a memorandum by George Clarke Secretary of War, his clerk Mr. Payzant

in transcribing the fair copy which was actually signed left out the italicised words *and all such as are under their protection in these counties.* The mistake was discovered the next day, before the actual surrender had taken place, and Sir Theobald Butler drew Clarke's attention to it. But by this time the actual signed copy had gone with Ginkell to the King; and the Lords Justices, while acknowledging the mistake, thought it "inconvenient with the respect they owe to His Majesty" to rectify the matter before they received his answer. This seems a perfectly consistent and credible story; its truth was admitted afterwards by the Lords Justices and William himself.[24] There seems to be no reason to suspect that the omission was in any way intentional; but equally there seems to be no reason to suppose that there never was any omission, and that the whole story of the omitted words is an invention.

It is curious to see how modern historians have treated this point. Macaulay omits all reference to it. Murray declares that of the civil articles two only, the first and the twelfth—both, be it said, dealing with religion—are concerned with the fate of the Irish. And he does not quote the second article at all. But he devotes a page to Clarke's story of the omission mixing up with it however at the end the question of religious toleration. Then later on he alludes to the clause as if instead of being an omission it had been added. Thus on

[24] In the following February William by Letters Patent declared that the words had been casually omitted by the writer. Story gives substantially the same account of the omission; but says that the arrival of the French Fleet led the Lords Justices to allow of the omitted words.

page 250 he speaks of the "addition made in the second article of the civil treaty of Limerick."[25]

But it is Froude who gives the most extraordinary account of this transaction. According to him, William's express statement in his declaration of February, 1692, that the words had been accidentally omitted is false: the omission had been a deliberate one on the part of the Lords Justices who had arrived before Limerick between the settlement of the original draft on September 28th and the actual signature of the Treaty on October 3rd. Further on he speaks of the "extended form" in which the King had ratified the articles, and finally treats what at first he puts forward as a hypothesis as if it was a fully established truth, for he actually speaks "of the features which had been surreptitiously introduced into them (the articles)."[26]

He gives no real reason for such extraordina y behaviour on William's part; nor does he explain why the Lords Justices who, according to him, had deliberately omitted the words, afterwards declared that the omission was due to an accident.

We can test the reliability of Froude's theories on one point, and on that it decisively breaks down. He says "The estates of those who were absent, and yet were compromised in the insurrection, were in the counties thus carefully particularized, and thus it might be said that nearly every Catholic of consequence, with a disposition to be dangerous, would be covered by the broad vagueness of the word 'Protection.'"

[25] On page 308 however he speaks of "the omitted clause."

[26] Froude: *English in Ireland*, pp. 205, 225, and 254 of the edition of 1872.

It is only necessary to examine this statement to see the absurdity of it. For of the five counties named, in which King James still had forces in arms, Cork and Limerick were almost entirely in possession of the Williamite troops. In Kerry scarcely any Catholics had recovered lands at the Restoration. So there remain merely the two counties of Clare and Mayo in which there could have been any considerable number of persons covered by the disputed words. Sligo, named by Froude is not mentioned in the second article at all, although it is mentioned in the heading.

The Treaty of Limerick had stipulated that the conditions agreed on were to be confirmed by Parliament, and William had promised in his Letters Patent confirming the treaty to recommend this. When at last, after long delays and at least one refusal the Irish Parliament did pass an Act purporting to confirm the Articles, the disputed clause was omitted by the Commons. The Lords at first objected; but finally the Act, in its mutilated form, became law by a majority of one vote.

Seven temporal peers and seven bishops protested that while the title of the Act was "for the Confirmation of Articles made at the Surrender of the City of Limerick" yet no one of the said Articles is therein fully confirmed. It seems that William, despairing of overcoming the resistance of the Commons reluctantly consented to the omission of the words and "all such as are under their protection in the said counties."

To sum up this question we may conclude that the disputed clause was agreed on by both sides in the original draft of the articles; that its omission

from the copy actually signed was purely accidental; that neither the Lords Justices nor William desired to take any advantage of this omission; that yielding to the clamour of the colonists the clause was omitted from the Act of Parliament purporting to confirm the articles of Limerick; and that the number of persons affected by this omission cannot have been very great.

Returning now to the actual effects of the second article, it is to be noted that its drafting does little credit to the representatives of the Irish. For it stipulated for terms only for those actually in arms for King James, or under the protection of the Jacobite forces. Therefore it acquiesced in the forfeiture of all prisoners of war and of all those civilians in that part of Ireland, by far the greatest portion, which was already in the hands of the Williamites as well as of all those who had fallen in fight or died during the war.[27] It is true that the first terms asked for by the Irish had included a complete amnesty for all the supporters of James. These terms had been scornfully rejected by Ginkell; but it seems probable that as regards the estates of the partisans of James a little perseverance would have obtained better terms. William was anxious to end the war at any price, and must above all have been anxious to prevent any considerable emigration from Ireland to France.

[27] And the "Act for Confirming the Articles" enacted that all persons absent from Ireland when the Treaty was signed were excluded from it unless they were comprehended within the 3rd and 4th Articles. The latter only referred to four persons.

The Duke of Berwick in his memoirs criticises severely the imbecility of the Irish plenipotentiaries.

Under the provisions of the articles of Galway and Limerick, as finally ratified by the Irish Parliament, 1,283 Catholic proprietors retained their estates estimated to amount to 233,106 Irish acres. It would seem, too, that between the surrender and the Act of 1697 a certain number of the Irish were allowed the advantage of the disputed clause.[28] In addition sixty-five leading men, with between them 74,733 plantation acres were pardoned and restored by William.

It is not necessary for our purpose to follow in detail the dealings with the forfeited lands. Most of them were disposed of by William to his favourites, many of them, such as Bentinck, Ginkell and Ruvigny, foreigners. The personal estate of King James, his share of the spoil under the Act of Settlement, was given to William's former mistress, the Countess of Orkney.[29] These grants provoked indignation in England, and the English Parliament set up a commission to enquire into the Irish forfeitures. Their report, presented in 1699, led to the English Act of Resumption in 1700 which revoked all William's grants except five, and directed that all forfeited estates should be vested in thirteen trustees and sold by them by public auction.

Before these transactions an Outlawry Bill had been introduced in 1697 into the Irish Parliament. This Bill contained a clause taking away the estates of all adherents of James who had been killed in "rebellion" or had died in foreign service, even if their estates had not up to then been

[28] It seems likely that after the passing of this Act these people were dispossessed.

[29] It was estimated at over 95,000 acres; other estimates put it at 120,000 acres.

forfeited. But the Irish House of Lords protested vigorously against punishing by attainder the families of men who had been killed in the service of one whom they had considered to be their lawful sovereign. According to Froude, a less sweeping measure was introduced. But the Act in its final form as printed in the Irish Statutes expressly convicts and attaints all persons who either had been found by a jury or who within two years from September 1st, 1697, should be found to have died or to have been slain in actual rebellion.

This Act, as I have already said, took away from the Crown all power to reverse outlawries, etc. not reversed or pardoned before July 27th, 1697, except in the cases of those who had been adjudged, or who within two years might be adjudged within the Articles of Galway and Limerick.

But from the operation of the Act were excluded thirteen peers, including Sarsfield, and about nine other persons.[30] Of these Lord Kerry and Lord Kingston were Protestants. These the King could pardon if he wished and if they submitted; and accordingly most of them were pardoned and restored.

Much confusion exists in our printed sources owing to the two Acts of the Irish Parliament of 1697, and the English Resumption Act of 1700. This last did not interfere with those persons who had been adjudged to be within the Articles of Limerick and Galway. But it led to a more

[30] The peers were Lords Tyrone, Kerry, Kingston, Bellew, Baltimore, Athenry, Upper Ossory, and the late Lords Tyrone, Dillon, Louth, Carlingford, and Netterville, besides Sarsfield whom James had made Earl of Lucan, and who had been killed in 1693.

stringent inquiry into concealed forfeitures.[31] It also set up a court before which all persons claiming any interest in the estates actually forfeited, were to appear and present their claims. Of 3,150 claims sent in, 373 were allowed. Much confusion has been caused by the way in which Hardinge has represented this matter in an article in the Transactions of the Royal Irish Academy. He speaks of the persons whose claims were allowed as "innocents," and several writers following him have taken these innocents to be the same as the persons comprehended within the Articles of Galway and Limerick. He further states that to these "innocents" the Court of Claims awarded 655 denominations of land with a total area of 97,853 Irish Plantation acres, and 1,965 denominations with no area specified. By a sum in simple proportion he then arrives at the result that 391,412 Irish acres were "restored" to these innocents. As 640,460 Irish acres were actually sold, besides 402 denominations whose areas are not stated, he thinks that 716,374 Irish acres were ultimately forfeited, which with the 391,412 acres "restored to innocents" and the 307,839 retained by the persons comprehended in Articles or pardoned by William would make up a total of 1,415,625 acres, an amount entirely at variance with the statement of the Commissioners in 1699.

But when we look at the list of "innocents" which he prints we find among them notorious partisans of William such as the Duke of Ormond,

[31] The Commissioners had reported that there were many persons not yet indicted for rebellion, and many concealments.

the Earl of Thomond, Sir R. Southwell, Lord Massereene, several bishops and corporations, together with some forty undoubted Protestants of Co. Tyrone. There are some Catholics in the list, such as the children of Lord Kenmare who were minors, and other Catholics who had been pardoned by the King or were comprehended in the Articles. By far the greater number of the names however are those of Protestants. It would seem, therefore, that this list is really one of the claims to various interests in the forfeited estates which were allowed by the Court, and it is very probable that the figure of 391,412 acres given by Hardinge as the area awarded to these persons is altogether too high. On the other hand we may allow his figure of what was actually sold, and perhaps allow of his estimate of the area of the 402 denominations of which the area is not specified. The Commissioners explicitly stated that, besides the acreage returned by them, there were also forfeited lands of which no correct survey existed, and whose area therefore they had not estimated. There were also small parcels forfeited all over the country, which, said they, might amount to 70,000 or 80,000 acres in addition to their previous estimate. Thus the real area of the lands belonging to persons indicted and outlawed may well have been 1,150,000 Irish acres of profitable land, an amount which would allow an ample margin for the area adjudged to "innocents" as well as for the area restored by the King, or by the Articles of Limerick.

A few specific cases may be given to show how the estates of individuals suffered from the harsh

conditions of the Articles of Limerick especially as interpreted by the Act professing to confirm them. The Earl of Clancarthy, owner of nearly the whole barony of Muskerry, was taken prisoner at the surrender of Cork. He was therefore not within the Articles, and his vast estate, valued soon after at £60,000 a year was forfeited.[32] At the surrender of Cork no terms were made for the lands of the citizens, and so the old loyalist families Copingers, Sarsfields, etc. finally lost the lands which they had recovered with so much difficulty at the Restoration. Robert Grace of Courtstown, owner of an immense estate in Kilkenny, was included in the Articles. But he died soon after, and in 1701 it was discovered that his elder son Oliver had died in France nine days after Robert's decease. As this was *after* the Articles had been signed, and as his name had not been included in the fourth Article, the estate was forfeited; although for ten years it had been held by John younger son of Robert.[33] Daniel O'Brien, Viscount Clare,[34] to whose grandfather James I. had granted about one-half of the MacMahon territory of West Corcabaskin, had not only recovered his ancestral property at the Restoration, but had also got possession of the properties of several other persons.[35] His Clare estate was estimated at over eighty-four thousand English acres. He died in 1690. His sons followed the fortunes of their

[32] This is Archbishop Boulter's estimate in 1735.

[33] The Grace estate was over 32,000 acres.

[34] Daniel O'Brien, first Viscount Clare, was a younger son of Conor, third Earl of Thomond.

[35] In his will, made in 1690, he mentions that he had got the estates of others in his "proviso" and desires that they should be given back to the rightful owners.

sovereign in France, making no claim to the benefits of the capitulation.

If now, considering the results of the two Irish Acts, the Resumption Act, and the Articles, we try to estimate the area still left in the hands of Catholics, it would seem, making all allowance for the estates of minors, etc., for persons acquitted by partial juries, for under measurements, and all other sources of error, that this area cannot have exceeded, if it reached, a million *English* acres of profitable land.[36] The aim of the Penal Laws was to secure that this area should never be increased, and should if possible be diminished.

The Cromwellian confiscation and the proceedings at the Restoration had swept away the great bulk of the lesser Catholic landowners. Now, under William, of the great men who had recovered at the Restoration a large number lost everything and, following their King to France, disappeared from Irish history.

> "Wild geese rising on clamorous wing,
> To follow the flight of an alien king
>
> . . . . . .
>
> Ended the roll of the great
> And famous leaders of armies,
> The shining lamps of the Gael,
> Who wrestled awhile with fate
> And broke the battle on foemen,
> Ere the end left widowed Eire
> Lone with her desolate wail."

[36] 616,000 restored by the Articles, or by Royal pardon: then the estates of minors, etc., of those excepted from the Outlawries Bill (of whom some were Protestants), and claims, such as those of the Kenmare minors, allowed by the Court set up under the Resumption Act, and the estates of persons acquitted or never indicted would have to make up the balance. We might add about 350,000 acres for "unprofitable land."

CHAPTER VIII

THE RESULTS OF CONFISCATION

To sum up the story of Irish confiscation. At the accession of Henry VIII. about two-thirds of the island was still in possession of the native race. But these lands were held in defiance of the law, which looked on the Irish as alien enemies. The legal ownership of the greater part of the lands held by them was vested in the descendants of the Anglo-Norman barons among whom the island had been parcelled out in the thirteenth century, or had come to the Crown as the heir to the immense Mortimer estate.

As regards the remaining third held by the descendants of the settlers, here too a certain amount, notably in Connaught, had come to the Crown through the Mortimers.

Henry seems to have realised the inconveniences of this state of affairs; his policy appears to have been to enfranchise the Irish, and to settle the land on the basis of giving a legal title to the actual occupier. On his death there was a short reversion to the older policy of conquest and extirpation. But Elizabeth, as far as she had a fixed policy, followed on the lines of her father.

These lines, however, involved a breaking down of the old clan organisation, and the substitution of English law for the Brehon law. Above all they

involved the destruction of the independence of the chiefs and of the clans. The religious innovations of her reign, and the attempts to force a people to give up its own customs and its own civilisation, even though these involved a state of constant strife which to us appears intolerable, led to constant resistance to her authority. This resistance, in turn, led to confiscation, though on a far smaller scale than is generally believed.

With the Stuarts a new era opens. Confiscation by legal subtleties succeeds to confiscation based on force of arms. The confiscations carried out under James and planned, if not carried out, under his successor took place in a time of profound peace. Elizabeth had not differentiated between Celt and Anglo-Norman. Though much of the confiscated land was given to Englishmen much also was granted to members of the native race or to families long settled in the island. Catholics were not shut out from her grants; indeed of many of the planter families established in her reign it would be difficult to specify the religion. English Catholics often settled in Ireland to enjoy a greater freedom of worship than they had at home, and this settlement was, it would seem, actually encouraged by the government.[1]

But under James all is changed. His confiscations were carried out at the expense of the old Irish; his colonists were almost all British; they were exclusively Protestant. No Catholic and no "mere Irishman" could acquire any lands once

[1] Thus the family of Grene, now widespread in Tipperary and the adjoining counties, came over to secure greater religious freedom.

set out to colonists. To the two elements of the population the Celtic or "mere Irish" and the Anglo-Norman or "old English," whom we may now begin to call the Anglo-Irish, had been added under Elizabeth a third element the new English. This was strengthened under James; kept apart as far as possible by a system of dense colonisation from the older elements; was strongly differentiated from them by religion. The religious opinions of many of the Elizabethan settlers were, as I have said, not very definite. This was the case with a very large proportion of the English nation at the time. But under James Puritanism had made strides, High Church Anglicanism had developed and grown definitely apart from Rome, the Scots in the north added a strong fanatical element.

A common religion, common disabilities began to draw the two older elements together. The conscious idea of a *nation* begins to appear. But the test of nationality becomes almost a religious one. The descendant of the planter of Leix or the undertaker of Munster, if a Catholic, begins to be classed as an Irishman. The Protestant heirs of Brian of the Tributes feel and speak as Englishmen.

By the year 1641 we find somewhat more than half the island still in possession of Catholics, some of them the descendants of planters of the previous generation. Against these last we must set the few great men of the two older elements who had embraced the new doctrines. Perhaps we may calculate that in 1641 three-fifths of the island belonged to the descendants of the owners

of a century before; the remainder to colonists planted on confiscated lands.[2] Then comes the great upheaval of 1641. Old Irish and old English combine for the first time in opposition to the newcomers.

All the lands in possession of Catholics were confiscated under Cromwell, except those of the few who were able to prove "constant good affection" to the parliament of England. But to certain classes he set out lands west of the Shannon estimated at about one and a half million English acres at the outside, or something under one-thirteenth of the whole area. By fraud, by force, or by sale at nominal prices, a large portion of this passed into the hands of Cromwell's supporters. In 1664 the Irish agents asserted that there were still one hundred and fifty-six thousand (Irish?) acres due but not yet set out to transplanted persons.

The remainder of the confiscated land was divided amongst his supporters, largely among the soldiers who had fought in, and the "Adventurers" who had subscribed money for the conquest of Ireland.

The Restoration upset this state of affairs. The Catholics retained what had been set out to them in Connaught, and the fortunate few among them recovered a certain amount of what they had lost. How much is a disputed point. The highest estimate, Petty's, asserts that the Catholics ultimately under Charles II. possessed one-third of the

[2] It must be remembered that of the area in the hands of colonists in 1641 much had been church lands, confiscated under the action of Henry VIII.'s laws.

island. I have given, elsewhere, reasons for believing that this estimate is greatly in excess of the truth: it is possible that instead of a third, they held a seventh or even only an eighth.[3] Whatever they actually held at Charles's death, it is certain that by the confiscation that followed on the downfall of James the Catholics lost about a million and a half English acres of "profitable" land. The Cromwellian and the Williamite confiscations, like those of Elizabeth, had fallen on Irish and Anglo-Irish alike. Among the victims too were to be found many whose ancestors had first settled as colonists of forfeited lands under Mary, or Elizabeth, or even James. A common misfortune had welded all these into one race.

When the Court of Claims set up under the Resumption Act had done its work it is doubtful whether as much as one-twentieth of the soil of Ireland remained in the hands of Catholics. If we add to this the area held by those great lords of the old race who had embraced Protestantism we shall get the whole amount held in 1703 by the descendants of those who a century and a half before had held the whole island. The remainder had been confiscated, some of it twice over.

The object of the penal laws of the eighteenth century was to secure that the area still owned by Catholics should never be increased, and should be as far as possible diminished. These laws succeeded but too well in their object. At the end of the seventeenth century while, chiefly by the opera-

[3] Bonn accepts Petty's figures, and holds that under William the third was reduced to a sixth. (*Bonn*, Vol. II., p. 158). Both these figures seem to me to be much too high.

tion of the Court of Wards, several of the great houses, Ormond and Kildare, Thomond and Barrymore, Kerry and Howth and Inchiquin—to name the most prominent—had conformed to the Established Church, yet the great bulk of the nobility and gentry, both old Irish and old English, had remained faithful to Rome.

In the eighteenth century the bolder spirits emigrated; of those landowners who remained behind sooner or later the great majority accepted the dominant Creed. Antrim and Clanrickard, the later house of Ormond, the five lesser peers of the Butlers, the O'Neills of Clandeboy, the Mac Carthy Mórs, the Mac Morrough Kavanaghs are some of the outstanding names.[4] It is curious that among the few who held to the older faith are three or four of the "lords of the Pale" and the "undertaker" family of the Brownes of Killarney, Earls of Kenmare.

After seventy years the rigour of the laws was relaxed. Catholics were allowed first to acquire lands on lease, and finally full rights to the acquisition of landed property. Yet when Wakefield wrote his *Account of Ireland* in 1811 or 1812 he found seven counties with not a single considerable Catholic landed proprietor, among them being Clare. In twenty-one other counties he finds something over sixty; and he says that in Galway one-third, in Kerry one-fourth, and in

[4] The head of the last-named family had only just "turned" when Wakefield wrote.

According to Bonn, thirty-six landlords became Protestants between 1703 and 1709, and one hundred and fifty between 1709 and 1719. He quotes the Carte papers. Between 1703 and 1788 there were 4,800 converts. (*Ibid*, Vol. II., p. 176).

Cork one-tenth of the total area was in the hands of Catholics.[5]

In considering the effects of confiscation in Ireland it is important to remember that except at the Plantation of Ulster there was no removal of the actual tillers of the soil. The vast majority of this class had had under the clan system only a semi-servile status. Under the lords of Anglo-Norman descent the lot of the "churls" was little better. It is quite probable, if not actually certain, that the lot of the tillers of the soil was actually improved—except in the case of Ulster—when the free clansmen, the ruling aristocracy, lost their lands.[6]

We must be careful, of course, to except from this statement the poorer clansmen who held but

[5] In Kerry the immense Kenmare estate must have accounted for the greater part of the area held by Catholics. In Sligo there were no Catholic landlords of importance, and in Mayo only three or four. On the other hand he was disposed to think that the majority of *personal* property was in Catholic hands.

[6] Bonn quotes in this connection a curious statement from the Alethinologia of Lynch as to the "insolence" of the "agricolae" under Cromwell. There is also an 18th century poem by Eoghan O'Rahilly in which the poet sarcastically acclaims Cromwell as the noble chief of the clan of the churls. "The Thanksgiving of the jovial churl, his wife and family, during the time he had Oliver Cromwell as Protector."

"As St. Patrick checked the cattle-plague
For the children of Adam in Ireland
So you have checked for us the week-day (work)
And many unjust liabilities.
I beseech that nor Kavanagh nor Byrne
Nor Nolan, nor Kinsella
Nor Rice nor Roche
May get a sod of their ancestor's portion."

I am indebted to Professor T. O'Donoghue of Cork for the above translation.

small shares of the clan lands, and who, as I have pointed out, in many districts such as Wexford, Carbery in Cork, and west of the Shannon, formed a veritable peasant proprietary. Many of this class no doubt actually cultivated the soil; and this class suffered grieviously in the plantations under James, and practically ceased to exist after the Cromwellian confiscation.

We are constantly told that the lands of the peasants were first, by Henry VIII. and Elizabeth, handed over to the chiefs, and were then confiscated from these latter. This is true, as we have seen, of a part of Ulster, and of some other districts; but it is untrue of the island in general. The "churls," "nativi," or whatever we may call the unfree classes, never had any property in the lands of the clan; and of the lesser free clansmen who had such property very large numbers retained it until dispossessed by Cromwell.

But if, in the seventeenth century, the earth-tillers actually benefited by the confiscations, the eighteenth century saw a great deterioration in their position. Up to the epoch of the penal laws the State had attempted to secure some fixity of tenure for those who actually cultivated the soil. All the various plantation schemes had rules providing that the planters should as far as possible let their lands only on lease; tenancy at will was discouraged.[7] But with the beginning of the penal laws we find a complete change. The Irish Catholic tenant was shut out from any chance of

[7] Chapter I., Book V. of Bonn should be carefully read in this connection. In Chapter VII. of Book IV. he points out how yearly tenancy fitted in better with the ideas of the Irish: see pp. 145—146 of Vol. II.

securing fixity of tenure; and as Catholics formed nearly everywhere the mass of the population, this was equivalent to the introduction of tenancy at will, or at the most for short periods, over the whole island outside Ulster.

As a result of the various confiscations we find among the tenants, over and above the descendants of the original "churls" whose ancestors, as Bonn points out, had been serfs perhaps since the time of the Firbolgs, descendants of men who a few years before had owned land and ranked as gentry. A common misfortune drew the two elements together, and ultimately welded them into one. To this admixture Bonn ascribes the curious combination of servility and passionate fierceness which is a marked feature in the character of the Irish peasant.[8]

The outstanding result of confiscation in Ireland was to establish an almost complete divorce between the owner and the tiller of the soil. There are other European countries, as for example, some of the lands under the rule of the Habsburgs, in which confiscation based on religious grounds was carried out during the seventeenth century in a manner almost as sweeping as in Ireland.

But in most of these the mass of the people had either never accepted the new doctrines, or, if they had, they soon returned to the older faith. And, with the one exception of Bohemia, there was nowhere such a difference in race and language between the new landowners and the old as there was in Ireland. In Styria and other Austrian

[8] Jene Heftigkeit und Wildheit, die neben der Schmiegsamkeit eines der merkwürdigsten Kennzeichen der unteren Klassen Irlands ist. Vol. I., p. 389.

provinces the new owners, if not German by race, soon adopted the language of their tenants; in a generation or two there was no racial difference felt. Above all the old social structure lived on in spite of confiscation.[9]

In Bohemia, however, we find a close parallel to Ireland. There we find a revolt, based largely on religious motives, terminating in the complete conquest of the rebels after a struggle which is said to have reduced the population from 3,000,000 to 800,000.[10] The victorious sovereign held that this rebellion and its repression had involved the loss of all the ancient rights and privileges of the nation. The lands of all rebels were confiscated. Going farther the Emperor Ferdinand decreed the expulsion from the country of all who did not submit to the Church of Rome, even if they had never resisted his authority. A delay of six months was given to the nobles to see whether they would conform. If they did not, they were allowed another six months within which to sell their estates.[11] Count Lützow declares that more than half the landed property of Bohemia thus changed hands and that of the larger estates in the country only one hundred and forty-seven remained in the hands of their previous owners.[12] The estates

[9] In all the Alpine lands the existence of the communal organisation gave a certain amount of independence to the peasants. Many if not most of the communes owned and still own mountain pastures, forests, etc. A free peasantry, too, survived in many districts. There are still some Protestant communities in Styria and others of the Austrian lands.

[10] This is for the whole period of the Thirty Years' War 1618 to 1648.

[11] This at least is Lützow's account.

[12] No doubt much of the land that did not change hands belonged to the towns, the communes or the Church.

thus confiscated were divided amongst Germans, Spaniards, Walloons and Italians, and amongst the grantees, by a curious irony of fate, were to be found some Irishmen.

The new régime sought security by resting on the German element, already strong in all the towns and in some of the country districts. The German element, profoundly hostile to the Slav, had on that account kept apart from the religious innovations which had found such support among the native Czech race. There was a Catholic Ulster of German speakers firmly planted in the north-west portion of the kingdom.[13] The German tongue with German culture rapidly became supreme under the patronage of the State.

In one respect, however, there is a profound difference between Bohemia and Ireland. The mass of the people deprived of their preachers and of an upper class belonging to the reformed religion, soon, under the unceasing labours of the Jesuits and other missionaries and under pressure from the State, reverted to Catholicity. According to Lützow, Bohemia presents the nearly unique case of a country which formerly almost entirely Protestant, has now become almost entirely Catholic.

Thus one great source of divergence was removed. But Lützow says: "Yet the evil seed of hatred and distrust sown by the oppressors of the seventeenth and eighteenth century bears evil fruit up to the present day. Bohemian peasants even now instinctively distrust the nobles of their country, even if they belong to their own race, and are in sympathy with the national cause."

[13] Also in the extreme north.

But in Ireland, even more than in Bohemia, and more than in any other western European country, there existed in the eighteenth century two peoples of whom one formed the dominant caste, separated from one another by barriers of race, of religion, and, for a time, of language.

The Baltic provinces of Russia occur to one as in some sort a parallel. As Ireland is the most westerly, so are these provinces the most easterly part of Europe where a dominant aristocracy of Germanic blood has brought an alien race under its power without either exterminating it or assimilating it. In Ireland the colonist is marked off from the native by race and religion, but the language of the former has been adopted by the latter. In the Baltic provinces the two elements are separate in race and in language, but the peasantry of Lettish or Esthonian blood has the same Lutheran religion as its masters. And both landowner and peasant have over them a foreign master differing from them both in race, in religion and in language.

"Local landownership and autonomy," said a Russian lecturer recently, "are almost entirely in the hands of the nobility, whereas at least 75 per cent. of the peasantry have till now remained landless. . . . The economic and legal privileges of the nobility naturally served as an inexhaustible source of discontent in the region and not infrequently led to undesirable excesses."[14]

It seems then that there has been less fusion in the Baltic provinces than in Ireland. The barrier of language has been very great, and though

[14] *Times'* Russian Supplement, Oct. 30, 1915.

religious discord, and disabilities arising from Creed have been absent, the legal and social system has shut out the mass of the original inhabitants from rising into the position of landed proprietors. Even the merchants of the cities and the culture of the University are predominantly German.[15] How far apart the races still are was shown some ten years ago during the agrarian troubles, accompanied as they were by excesses on the part of the peasantry and by measures of repression on the part of the government which rivalled anything done in Ireland by either party in 1641 and 1642.[16]

[15] If any of the native nobility preserved their lands they were fused so long ago with the conquering Teutonic "barons" that they now form only one caste. The same applies to any descendants of Danish and Sweedish nobility in these provinces.

[16] The following extract from the *Times'* Russian Supplement of December 17th, 1915, is interesting:—

"The record of the atrocities in the Baltic provinces was published to the world in a proclamation, printed in six different languages, by the wronged and suffering people. It was but a foretaste of what other German Junkers perpetrated in Belgium last year.

"A very curious German publication, published in 1883, also throws further light on the German attitude. It purports to be a correspondence between two German students, one of whom is visiting in Livonia and one in Ireland, and the comparison drawn between the two ancient kingdoms is, in the light of recent events, very instructive. The Irish peasantry are ruled by English landowners, the Letts by German ones. Where the Germans conquer, he says, they reorganize, and the people benefit. Where the English conquer, they sink to the level of the peasantry they misrule. 'Here,' says the writer proudly, 'peasants 300 years under the care of Germans come into their kingdom. Livonia's prosperity is the result of a healthy aristocracy, Ireland is the victim of a desolating robber system.' 'Dem Deutschen,' he proudly concludes, 'aber wurde Livland zur Heimat; j'y suis, j'y reste.'"

In Ireland, in the eighteenth century there was, in spite of all conflicts, a certain amount of fusion. Of the upper classes a fairly large number adopted Protestantism, and so became identified with the ruling caste, while preserving a certain amount of sympathy with their Catholic kindred. The poorer among the colonists in many cases adopted the religion of the people among whom they dwelled. And for the mass of the people there was always the possibility of escape from all disabilities, and of a rise into the dominant caste provided only that they embraced the dominant religion. The history of families such as that of Hely Hutchinson, of O'Callaghan, Lord Lismore, and of Fitzgibbon, Lord Clare, shows that such a rise into the governing classes was by no means uncommon.

There is one special feature of Irish social organisation, springing directly from the confiscations, to which Bonn draws attention. In scarcely any other country of Europe was the power of the landowner so absolute. It was not checked by any manorial system such as prevailed in England, nor by any communal system such as we find on the Continent. The Irish peasant stood alone in an individual relationship to the landlord. He had no rights based on immemorial custom, and strengthened by being enjoyed by an organised community. The German or Hungarian serf, the English manorial tenant formed part of a definite organisation, recognised by the law, possessing certain rights as against the landowner. The serf could not be dispossessed of his holding; it was therefore contrary to the interests of the lord to let

him starve. The copy holder, and even the inferior tenants on the English manor, had certain rights of pasturage, etc. But in Ireland the wood, the turf bog, the mountain pastures belonged to the landlord.[17] Each tenant dealt as an individual with the owner of the soil. He was personally free, for under James I. the last traces of serfdom had been abolished; but on the other hand, as a tenant at will he stood absolutely at the landlord's mercy. Different conditions, of course, prevailed in Ulster from the first, amongst the Protestant settlers, and in that province after bitter struggles the "Ulster custom" was recognised at least as regards Protestant tenants.

It is curious to find results such as these arising to a certain degree from the personal freedom of the Irish peasant; and it is worthy of remark that in Spain where serfdom never took root, almost the same unlimited power of the landlord existed as in Ireland.

As to the actual economic position of the mass of the population after the confiscations there is a certain conflict of evidence and of opinion. But when we consider the famines of the first half of the eighteenth century, one of which is said to have caused the death of 400,000 people, and when we read the accounts of the condition of the lower orders given by Swift, Berkeley and others, we are led to the conclusion that the economic condition of the peasantry was as bad if not worse than that of the French peasantry in the darkest days of the closing years of Louis XIV.

[17] See Bonn, Vol. II., pp. 177—179. In Ireland there seems to have been very little common land, such as we find in England.

Yet the picture is not one of unrelieved gloom. The large resident landlord population could not fail to develop a certain amount of sympathy for the lower orders with whom they were in daily contact. The lower orders often transferred to the new landowners some part of the attachment they had felt for their former chiefs. In particular a close bond often united those few of the old houses who had retained their lands with their tenants. And bad as the eighteenth century in Ireland was it does not perhaps after all compare so unfavourably with the same period in Continental countries. There was horrible cruelty and constant oppression, with on the other hand continual wild outbreaks on the part of he peasantry. Probably no other country could produce such a degraded type as the squireen or buckeen, the drunken, gambling, profligate descendant of the Cromwellian or Williamite settler. But if we look into the political status of the peasantry in the various German States, in France, and even in Swiss Cantons such as Protestant Bern and Catholic Luzern, we may come to the conclusion that in certain respects their lot was even harder than that of their contemporaries in Ireland.

Having traced the course of confiscation in Ireland, and seen some of its effects, one might be inclined to speculate a little on whether the twofold process of confiscation and colonisation has really been to the advantage of England. The examples of Scotland and Wales are perhaps a sufficient answer to the query. In one there were frequent rebellions; the other is a conquered

country; but in neither has there been colonisation, and the land has remained to a great extent in possession of the native race.

The result is that, though in both there is a healthy national feeling, in neither can we discern any real hostility to England.

The two counties of Ireland which are most thoroughly British are Antrim and Down, where colonisation was founded, not on force or confiscation so much as on peaceful penetration.[18]

Had a process of assimilation and peaceful penetration, such as Henry VIII. seems to have planned, gone on over the whole island, what might not have been the result? Irish unruliness, English religious innovations impeded this scheme, and led, as if inevitably, first to confiscation, and then to colonisation.

Experience has shown that the landed interest of a country, if not vexed in matters of conscience or in pocket, tends almost always to become the firmest support of the existing form of government. There seems no reason to believe that the spirit of loyalty to the person of the monarch which we find so marked among the Catholic nobles and gentry under the Stuarts would not have grown, and spread downward among the people, if unhampered by the constant vexatious interference of the State with both the conscience and the estates of all Catholics, until it finally became a feeling of attachment to existing institutions.

[18] For which, however, a way was paved by Chichester's massacres.

With it might have come as in Scotland the gradual adoption of the language and ideals of England. But with confiscation and accompanying colonisation came the introduction of a new element, alien in blood, in religion, in ideals, bringing a disturbing factor into the nation's life, preventing the steady development among the older element of such a feeling of loyalty and of content with the régime finally set up under James I.

It is so hard for us nowadays to realise this spirit of loyalty, that modern writers often altogether overlook or deny its existence. But that it did exist, in spite of everything, among the bulk of the landowning classes the whole proceedings of the Confederate Catholics both clergy and laity from 1641 to 1652 shows. Their professions of devotion to the Crown appear to us moderns abject; but they redeemed their professions by the sacrifice of their lives and their property.

That the "new interest" prevailed at the Restoration, that the second Charles and the second James were persuaded that the interests of England demanded the sacrifice of the Irish did not shake their loyalty. But unluckily for them it was loyalty to a dynasty rejected by the majority of the British.

Every fresh confiscation had increased the number of those who, though they may have been loyal to the dynasty, were disaffected to the system by which that dynasty governed. The new dynasty had but little claim on the sympathies of the Irish Catholics, yet we find very soon an acceptance of the House of Hanover by practically all of them

who had retained their lands.[19] With but few exceptions it was the landless men who followed the path of the wild geese.

The penal laws aimed at keeping the Catholic interest in the depressed position in which the last confiscation had left it. It has often been said that these laws were provoked by if not modelled on the anti-Protestant enactments of Louis XIV. But the French penal laws stopped short at the Vosges. The Protestant noble or burgher or peasant of Alsace was not injured in pocket or in conscience by his foreign rulers. The result was that barely four generations had passed before Alsace, differing entirely in language, and largely in religion from France, yet had become one with her in sentiment. To the young Goethe Strassburg and the adjoining countryside appeared German in all outward characteristics and very largely so in mental ones. Yet nowhere in his account of his Strassburg days does he give any hint of the existence of any hostility to France, of any desire for reunion with Germany.

And in the same age an Irish peer, Viscount in Ireland, Count Taaffe in Austria could assert that neither was Protestantism any bar to advancement under Maria Theresa, nor Catholicism under her rival, Frederick the Great. And he drew the moral that it was not Ireland so much as England which suffered from the effect of the restrictive legislation in Ireland.

[19] Swift, writing in 1725 says, according to Froude: "The Papists in general of any substance or estate, and the priests almost universally are what we call Whigs in the general sense of the term."

Then, too, restrictive legislation lasted much longer in Ireland than in continental countries. Practically in no country in western Europe outside the British islands did a man's religious opinions shut him out from State employments after the opening of the nineteenth century.

Wakefield quotes from a speech of a Colonel O'Shee, no doubt a member of the old Kilkenny family of that name, who had commanded 3000 men in that Austrian army which had battled so stubbornly against Napoleon at Wagram. He told a Kilkenny audience that nowhere in the Austrian dominions, or in the various German States would a man's creed shut him out from military command. In the United Kingdom alone did a man's religion exclude him from the service of his lawful sovereign.

It is not from the ranks of the old Irish gentry, whether of pure Irish or of Anglo-Norman descent, whether Protestants or Catholics, not from the Ormonds or Fingals, the Clanrickards or Inchiquins that the majority of the leaders of Irish national movements in later times have sprung. The direct descendant of that Brian Mac Phelim O'Neill, Lord of Clandeboy, who had been the victim of the treachery of the first Earl of Essex under Elizabeth, was, while fighting in the cause of George III., as Wakefield puts it, "basely murdered by a banditti of rebels who consisted chiefly of Presbyterians." The 26th Lord of Kerry, Marquess of Lansdowne, head of the Fitzmaurice family, descendant of some of the most obstinate rebels of Elizabeth's day, has more than once held some of the most important posts in the Empire.

To turn to the other side of the picture, it was Protestant Ulster that overthrew the Stuarts. It was the Presbyterians of Ulster, driven from their homes by the mistaken religious and economic legislation of the 18th century who formed the backbone of the armies that put an end to the rule of England in what is now the United States. The independence of the Irish Parliament in the closing years of the 18th century was won by the colonists. The main strength of the United Irish movement was amongst the Protestants of the north.

Not all of these movements can be considered as being to the advantage of England. And during the nineteenth century it was the colonist element which produced Emmett, Davis, Butt, Biggar and Parnell.

Largely owing to the efforts of leaders sprung from this element the work of confiscation has been to a great extent undone in recent years. The land is passing back to the older race. Peasant proprietorship, so abhorrent to the theorists of the age of Elizabeth and James, utterly destroyed under the Commonwealth, is once more being set up. But at what a cost, and not of money only. What a waste of time, what a crop of ill-feeling, what a breach in the unity of the nation, what an expenditure of political energy which might so easily have been diverted into more profitable channels have marked the latest agrarian revolution in Ireland. It would perhaps have been better for England in the long run if this price had never had to be paid.

From the Irish standpoint no judgment can yet be formed. Reading the lamentable record of successive confiscations the words of the great Florentine exile as from the glories of the heaven of Mars he turned his thoughts to the old days of Florence when those were great who now were but broken exiles and the great houses, now all undone, made Florence flower in all her noble deeds, will strike a responsive chord

> "Oh happy they! each one to lay the head
> In her own tomb, and no one yet compelled
> To weep deserted in a lonely bed."

The sufferings of individuals, even of whole classes, from the effects of confiscation were greater perhaps than we can now conceive. In spite of some mitigating features, such as I have mentioned, the condition of the greater part of the population all through the eighteenth and for the greater part of the nineteenth century was indescribably wretched.

Yet, after all, two or three centuries are but a short span in the life of a people. In more than one country that space of time has seen a revolution in the ownership of land as sweeping as we have seen in Ireland. Even in peaceful England itself, owing to the working of economic causes, there are not many families who have held their property in the direct line since the days of Henry VIII.

> "To hear how noble families decay
> Will not appear a novel thing or strange
> Since states and kingdoms also pass away,"

once more to quote Dante.

Confiscation hit primarily the land-owning classes (a larger proportion, of course, of the total population in Ireland than in England); it was only its secondary effects that pressed hard on the great mass of the people. And wretched as was the condition of the tiller of the soil in the eighteenth century, may not his lot, and that of the smaller landowners actually have been worse, in some respects at least, under the constant feuds, the incessant raids which seem inseparable from the clan system? With colonisation came at least a more secure existence, the possibility of a higher standard of material comfort.

So in certain ways there has been a gain to the nation as a whole.

In the early part of the story of confiscation we have seen how frequently the colonist of one generation has in the next become the victim of a fresh confiscation. In this way the two races have to a certain extent mingled. And after the work of confiscation and colonisation was done there has, in spite of everything, been a certain amount of fusion, although on the whole it is the older element which has prevailed. The colonist has supplied a hardness, a sense of discipline, habits of sustained industry which were wanting to the Celtic character. He has gained a flexibility of mind and certain elements of sympathy and imagination in which the pure Teutonic race is singularly deficient. To confiscation and colonisation England owes a constant drain on her resources, a vulnerable point in her defences, a hostile sentiment with which in every crisis of her

history she has had to reckon. On the other side are to be set untold sufferings, rivers of blood and tears; but in the long run, while we can see much loss, it may be possible also to see a not inconsiderable gain, not indeed to the landowning class, but to the people of Ireland.

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BUTLER, WILLIAM F.T.
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